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**MORAL RIGHTS AS PART OF COPYRIGHTS AND THEIR  
RELATION TO HUMAN RIGHTS: THE INTERACTION OF RIGHT OF  
INTEGRITY WITH FREEDOM OF EXPRESSION**

Master`s Thesis

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## INTRODUCTION

Conflicts have always existed, but lately judicial systems have awakened to the emerging conflict between copyright protection and freedom of expression. One reason to this is, that the violation may occur more easily in the digitalized world. Using of copyright protected is easier than ever.<sup>1</sup> In the area of copyright, conflicts arises especially from the protection of moral rights of an author. Moral rights and in more particularly right of integrity of an author can be in conflict with other people`s right to exercise freedom of expression.<sup>2</sup> Moral rights mean that an individual author has a right to preserve and protect their connection to the created work. Moral rights mean that an author can, for example, prevent unauthorized use of his or her name and also to object use or alterations of created works in a degrading manner. Former example is known as right of paternity and latter as a right of integrity, which especially is causing conflict situations with the freedom of expression.<sup>3</sup> Moral rights of the author are not only intellectual property rights but also human rights.<sup>4</sup> Therefore, the conflict is not only between intellectual property rights and human rights, but between two human rights. When two rights are in conflict, a balancing of rights is needed.

The intellectual property itself is a roof concept which consists of the creation of minds, these can be for example copyrights, patents, and trademarks. Intellectual property rights protect creations of the mind, authors can, therefore, trust that they receive recognition and financial benefit for their efforts. Intellectual property rights guarantee different rights to authors and their works, these rights can be economical or moral ones, such as right of integrity, as presented above.<sup>5</sup>

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<sup>1</sup> O. Kotila. Respektioikeus uusien haasteiden edessä. IPRinfo, 23.10.2017. Accessible in Finnish: [https://iprinfo.fi/artikkeli/respektioikeus\\_uusien\\_haasteiden\\_edessa/](https://iprinfo.fi/artikkeli/respektioikeus_uusien_haasteiden_edessa/) (18.03.2019).

<sup>2</sup> K.A, Kelly. Moral Rights and the First Amendment: Putting Honor Before Free Speech? University of Miami Entertainment & Sports Law Review 1994, p. 211-212. Accessible at: <https://repository.law.miami.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1026&context=umeslr> (29.4.2019).

<sup>3</sup> World Intellectual Property Organization. 2016. Understanding Copyright and Related Rights. pp. 19,14,20. Accessible at: [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_909\\_2016.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_909_2016.pdf) (28.4.2019).

<sup>4</sup> E. Barraclough. Raging Bull and Fearless Girl – moral rights in copyright. World Intellectual Property Organization magazine 2018 (2).

<sup>5</sup> What is intellectual property. World Intellectual Property Organization. Accessible at: <https://www.wipo.int/about-ip/en/> (30.11.2018.)

To illustrate the conflict between the right of integrity and freedom of expression, two hypothetical cases are presented here. First example includes a film student who has done a documentary movie of homeless persons. In the movie the student was interviewing and observing homeless persons for the duration of one week. Later a studio buys the documentary and does some changes to it. Student is not happy about the changes and is convinced that the movie is not from its expression and style as the student intend it to be originally. According to the student, the movie detracts from the realism and also stark and choppy style of the movie is questioned. This case shows well the conflict where the right of integrity of the student as an author is in conflict with the freedom of expression by the studio. Second example involves an artist who has done a painting of a semi-nude woman. The painting is from a limited edition of an artist. A radical feminist owns the painting. According to the radical feminist the painting is degrading towards women. An idea of display emerged, and the same radical feminist created a display where the painting was presented as pornography. The painting was held at display at women`s awareness center together with pictures from pornographic magazines. The artist of the painting did not approve such use of the painting and was offended. Author could in this situation claim that the right of integrity was violated. <sup>6</sup> Then again, the radical feminist and the women`s awareness center can state that they have right to express their thoughts and opinions under freedom of expression. In such situation, a balancing of rights is needed.

Moral rights are recognized in several international legal instruments. One of these international legal instruments where the moral rights of the author are enshrined and regulated is the Universal Declaration of Human Rights (hereinafter UDHR).

“(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.” <sup>7</sup>

Perhaps the most important binding international legal instrument regulating moral rights is The Berne Convention for the Protection of Literary and Artistic Works Berne Convention (hereinafter Berne Convention). It includes regulations concerning the protection of moral rights of an author in section 6bis and in sub-section 2

”(1) Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any

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<sup>6</sup> K.A, Kelly, *op.cit.*, pp. 213-214.

<sup>7</sup> Universal Declaration of Human Rights. Paris 10.12.1948, e.i.f, 3.1.1976, Art 27.

distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation.”<sup>8</sup>

The integrity of the work is protected, but also the integrity of the author as the right of integrity is understood as a personal right.<sup>9</sup> Besides the Berne Convention, WIPO Performances and Phonograms Treaty (hereinafter WPPT) is also an important treaty which protects moral rights of the performers.<sup>10</sup> However, the protection granted to the performers under WPPT is not so strong as in the Berne Convention. Right to respect is narrower for example.<sup>11</sup> Moral rights protection does not extend to the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter TRIPS), as moral rights are explicitly excluded from the agreement.<sup>12</sup> Moral rights are absent also from the WIPO Copyright Treaty (hereinafter WCT).<sup>13</sup>

Freedom of expression again is a very essential human right in a democratic society. Freedom of expression been enshrined and regulated in various international instruments. Freedom of expression is stated in the UDHR as following:

” Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”<sup>14</sup>

People need to have the right to express themselves, but this right is not unlimited. When rights are in conflict, the rights are weighed against each other, and either of the rights prevails to some extent.<sup>15</sup> The outcome of the balancing in conflict situations is depended on many factors, without proper balancing either or some of the competing rights can be unduly limited and lead to disproportionate results. When rights are competing, the balancing of rights is needed. Balancing of rights differs from the legal system to another. Civil law countries and common law countries have different approaches to the application of moral rights. In France and Germany moral rights are adhered highly, whereas in the United States moral rights

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<sup>8</sup> Berne Convention for the Protection of Literary and Artistic Works. Bern 9.9.1886, e.i.f. 5.12.1887, Art 6bis.

<sup>9</sup> K.A, Kelly, *op.cit.*, p. 211-212.

<sup>10</sup> WIPO Performances and Phonograms Treaty. Geneva 20.12.1996, e.i.f. 20.5.2002, Art. 5(1).

<sup>11</sup> International Bureau of WIPO. The WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. Accessible at: [https://www.wipo.int/export/sites/www/copyright/en/activities/pdf/wct\\_wppt.pdf](https://www.wipo.int/export/sites/www/copyright/en/activities/pdf/wct_wppt.pdf) (29.4.2019)

<sup>12</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights. Marrakesh. 15.4.1994, e.i.f. 1.1.1995, Art 9.

<sup>13</sup> WIPO Copyright Treaty. Geneva 20.12.1996, e.i.f. 6.3.2002.

<sup>14</sup> Universal Declaration of Human Rights, *op. cit.*, Art 19.

<sup>15</sup> J. Griffin. On Human Rights. When human rights conflict. New York: Oxford University Press 2008, pp. 58-59.

protection is not so strong.<sup>16</sup> It is hard to solve conflict situations between the right of integrity and freedom of expression, no matter what is country's current stand in the sphere of protecting moral rights. Arguments used in different cases in different countries amount to different outcomes, in Europe case can receive different outcome than in the common law countries.<sup>17</sup>

The topic of the study is not internationally and nationally widely examined, therefore research of the conflict situation between the right of integrity and freedom of expression is much needed and very necessary. It is crucial to find ways how to protect the right of integrity in the right balance.<sup>18</sup>

Purpose of this study is to examine situations where the right of integrity and the right to freedom of expression are in conflict and provide new knowledge to the matter. The study seeks to establish how Finland applies international law regarding the Berne Convention and the author's right of integrity. The study will establish how Finland interprets Berne Convention article 6bis concerning the right of integrity. The study seeks to determine whether or not regulation concerning authors right to integrity is applied in a manner which limits unduly exercising of freedom of expression. The study aims to provide solutions to the difficulties in balancing situations between the right of integrity and freedom of expression. In addition, the study aims to establish what factors should be considered when balancing the two competing rights. The study is limited to Finland for reason of narrowing the scope of the study. The study includes some cases as a supportive reference from other states. Connection to the international law comes from the commitment of Finland to various international legal instruments and especially from establishing how Finland applies article 6bis of Berne Convention through national law. A hypothesis is that too broad application of the right of integrity can jeopardize freedom of expression in some situations.

This study is very necessary for examining what are those situations when the right of integrity conflicts with the freedom of expression. The study is also very important in order to distinguish if moral rights protection in conflict situations is in right proportion to the actual need of protection, or could necessary protection be achieved in a way which limits less freedom of expression.

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<sup>16</sup> E. Schéré. Where is the Morality? Moral Rights in International Intellectual Property and Trade Law. –41. Fordham International Law Journal. 2018 (3), pp. 775-779.

<sup>17</sup> Barraclough, *op.cit.*

<sup>18</sup> Kotila, *op.cit.*

According to the Berne Convention, different human rights conventions, literature, and case law it is unclear if the author's right of integrity is more protected than other persons/groups right to exercise freedom of expression. The focus of the study is to find and analyze situations when the conflict between the right of integrity and the right to freedom of expression interacts. The study aims to provide new insights, knowledge, and solutions to conflict situations when two of the competing rights interacts.

The study is constructed using an analytical method as the main research method. The comparative method is also partly used when analyzing conflict situations through legislation and cases, references to cases and other states legislation are used as supporting the argumentation. Used sources include various treaties, conventions, commentaries of treaties, national legislation, journals, stenographic records, monographs, different articles, and case law. Main sources from international legal instruments are Berne Convention, Finnish Copyright Act, Constitution of Finland, UDHR, European Convention of Human Rights (hereinafter ECHR) and International Covenant on Civil and Political Rights (hereinafter ICCPR).

Structure of the study consists of two analytical chapters. The first chapter presents the conflict and examines rights which are in the conflict. In the first chapter moral right protection of author in Finland is established. The first chapter seeks to establish also the importance of freedom of expression. The chapter creates a basis for further understanding and examination of the conflict situations between the right of integrity and freedom of expression. Chapter one sets out also a legal framework of the rights.

Chapter two moves forward in analysis to further establish what are those conflict situations in Finland and what kind of factors influence the conflict situations. Chapter two aims to provide a further view of the conflict situations between the right of integrity of the author and others right to exercise their freedom of expression. The approach in the second chapter is done mainly through cases and with supporting national and international legislation and legal literature. Both chapters seek to analyze and establish answers to the question can conflict between the right of integrity and freedom of expression lead to situations when freedom of expression is in jeopardy. The whole study aims to find and establish factors which should be taken into account when conflict situations arises, in order to prevent unduly limitation of freedom of expression.

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Keywords: intellectual property, copyright, integrity, authorship, freedom of expression



## **I. TWO STRONG RIGHTS: RIGHT OF INTEGRITY AND FREEDOM OF EXPRESSION**

### **1.1 Importance of Right of Integrity and Freedom of Expression and Conflict Between Them**

The idea of the copyright legislation is to promote creativeness, to boost the creation of new works which people could enjoy. Copyright can be seen to be closely connected to the freedom of expression and democracy.<sup>19</sup> Distribution and producing of information happens through different works which might be copyright protected such as photographs, paintings, and videos. These works distribute and produce all kinds of information, some of the information might not be very controversial but some information might include for example criticism against the government. Freedom of expression and copyright can, therefore, be seen as intertwined. If some government official would try to alter message which some photograph is trying to express, then this might be violating of the author as his or her right of integrity could have been violated. This would paramount also to the violation of freedom of expression if that government official would prohibit the use of the photograph and in this way prohibiting the distribution of information. Copyright ensures that the works enjoy protection and that the message the works are trying to manifest is not altered or treated in a derogative way. It is very important that in democratic society citizens are able to express themselves and change ideas. However, good intentions of copyright protection might turn against it by limiting creativeness.<sup>20</sup> This can happen in various ways, the protection granted to the author might be so weak that the author does not want to create anything because somebody might just use or steal work for his or her own advantage. This can happen also another way around, in a situation when the right of integrity of author prohibits another creator from exercising his or her rights and limit creation of some artwork, protection of right of integrity might not be always in proportion, as freedom of expression might be unduly limited.

Relationship between copyright and freedom of expression has emerged lately more to headlines due to different cases concerning moral rights of the author and on the other hand, freedom of expression of others.<sup>21</sup> The approach of the United States regarding the interpretation of a stronger right in conflict situation is different than usually seen in European jurisprudence regarding moral rights. In common law countries, the right of integrity is given

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<sup>19</sup> K, Marko, J, Lavapuro, T, Mylly. Tekemisen Vapaus: Luovuuden Ehdot Ja Tekijänoikeus. Helsinki: Gaudeamus 2007, p. 21.

<sup>20</sup> *Ibid.*, p. 12-13.

less weight than in civil law countries. In Europe, copyright and freedom of expression are considered also as human rights. For this reason, the ECHR court has not given precedence to either of the rights, however, domestic and international courts have been in the first line to solve the battle between competing rights. The problem lies in the core of balancing of two competing rights, conflicts between copyright and freedom of expression have started rise more but case law around the conflict situation is still rather limited, there is no good balancing test to solve the conflict yet. When the European Court of Human rights (hereinafter ECtHR) has analyzed the conflict between privacy and copyright the court developed its own balancing criteria. Criteria were set to following in order to determine whether or not right is in conflict with freedom of expression: freedom of expression: (1) should be provided by law; (2) pursue a legitimate aim; and (3) be necessary in a democratic society.<sup>22</sup> Grounds for limitations of the freedom of expression should therefore be always in the legislation and have legitimate aim and also be necessary. Freedom of expression must not be limited lightly, and it should be always done so that the freedom of expression is limited as little as possible.

Approach to moral rights is different due to differences in legal systems. The United States as a common law country has normally been more restrictive in the use of moral rights but then again France as a civil law country has had a totally different view to moral rights known in French as *droit morale*. In France, moral rights have a strong protection. In the United States, visual artists have gained protection in the sphere of moral rights more, but still many forms of works are left unprotected. Weak protection of moral rights in the United States can be explained due to the young age of state and the relatively young age of the art.<sup>23</sup> In France, protection has started from the idea of protect “all works of the mind, whatever the type, form of expression, artistic merit, or purpose”<sup>24</sup> Interestingly, lately France has shown some signs to perhaps change its strict moral rights protection to a more objective view which takes into account more aspects regarding the freedom of expression.<sup>25</sup> It therefore seems that justice system in France has at least partly noticed the problem between the conflict regarding too strong protection of moral rights and then again right to freedom of expression. It will be left to the upcoming cases to clarify what will be approach of France to solve conflict situations

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<sup>22</sup> K. Buss. Copyright and free speech: The Human Rights Perspective. – 8 *Baltic Journal of Law & Politics* 2015 (2), pp. 197-198.

<sup>23</sup> C. Swack. Safeguarding Artistic Creation and the Cultural Heritage: A Comparison of *Droit Moral* between France and the United States. – 22 *Columbia-VLA Journal of Law & the Arts* 1998 (3), pp. 361-364.

<sup>24</sup> Code de la propriété intellectuelle (Intellectual Property Code). Adopted 01.07.1992, e.i.f. 03.07.1992. Art L112-1.

<sup>25</sup> M.A, Weiss. France’s Highest Court Rules in Favor of Freedom of Expression of Director over Heirs’ *Droit Moral*. Accessible at: <http://www.maw-law.com/copyright/frances-highest-court-rules-favor-freedom-expression-director-heirsdroit-moral/> (30.4.2019).

regarding the right of integrity and freedom of expression. Finland then again belongs to the group of civil law countries.<sup>26</sup> From the philosophical point of view Kant has argued “that a work of art expresses the artist's personality because his words or vision continually express his inner self.”<sup>27</sup> In this view, artist communicates his or her thoughts through art, and therefore according to Kant authors right to work is more of a personal right than property right. One other famous philosopher Hegel thinks that “it is through work that the spirit comes to know itself.”<sup>28</sup> In this view the personality of an artist manifests itself in the work, the object of art is necessary to communication.<sup>29</sup> Kant and Hegel have contributed greatly to the understanding of personality rights. Kant's and Hegel's ideas have been a basis to many others who later have been laying the ground for the understanding of the personality rights which are in the middle of moral rights.

Right of integrity is a personal right and an author has a right to object action towards his or her work which would be prejudicial to the honour or reputation of the author.<sup>30</sup> Action which the author could see as a violation of his or her reputation or honour might be needed in a democratic society. Then again, it must be assessed whether some action is such that it really violates the personal rights of an author in a way that limitation might be justified, regarding that freedom of expression is not jeopardized. For support of understanding conflict, one important international case is highlighted here. The Raging Bull and Fearless Girl case (see Appendix 1) is among the most famous cases which shows very well the depth of the conflict between the right of integrity and freedom of expression. In the year 1989 Arturo Di Modica placed his bull sculpture to the Wall Street. The idea of the bull sculpture was to tribute United States resilience and spirit after the Wall Street crash in 1986. Location of the bull was changed, and it has since been transferred to Manhattan. In the year 2017 artist Kristen Visbal's Fearless Girl sculpture was stationed to the same location where Raging Bull stand, only that Fearless Girl is positioned towards raging bull. The idea of the sculpture was to promote women's rights highlighting the situation of a number of women in boards of businesses. The big fuss did not arise from the good intentions of the Visbal's sculpture a promotion of women's rights but rather from the position of sculpture, how its body language

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<sup>26</sup> Global legal insights. Litigation and dispute resolution 2018, Finland. Accessible at: <https://www.globallegalinsights.com/practice-areas/litigation-and-dispute-resolution-laws-and-regulations/finland> (28.4.2019).

<sup>27</sup> T. G. Palmer, Are Patents and Copyrights Morally Justified? The Philosophy of Property Rights and Ideal Objects. –13 Harvard Journal of Law & Public Policy 1990 (3), pp. 817,839, 841.

<sup>28</sup> *Ibid.*, p. 837. See generally G. Hegel Phenomenology of Spirit (A.V Miller trans,1977)

<sup>29</sup> Swack, *op.cit.*, p. 371.

<sup>30</sup> Berne Convention for the Protection of Literary and Artistic Works, *op. cit.*, Art 6bis.

as almost like challenges Raging Bull sculpture across it by hand on the hips and chin up. Sculptor Arturo Di Modica did not like the Fearless Girl statue, he claimed that the statue violated the integrity of his sculpture raging bull under the Visual Artist Rights Act (hereinafter VARA).<sup>31</sup> Arturo Di Modica claimed that Fearless Girl has affected the original meaning of Raging Bull which should be a celebration to American resilience, not to corporate misogyny.<sup>32</sup> Arturo Di Modica then demanded that fearless girl statue should be removed, in the end, the claim of Arturo Di Modica did not succeed and until this day Fearless Girl statue stands across the Raging Bull. The case did not go to court, at least not yet. In this situation it is important to notice that the sculptures were protected under VARA legislation. The outcome in similar cases in United States can be different depending is the work protected under VARA. Even if Europe has stronger moral rights protection, arguments behalf of Arturo Di Modica could have been seen too weak also in civil law countries in order to limit freedom of expression.<sup>33</sup>

As in the case between the Fearless Girl and Raging Bull presents, there were competing interests with the two artists, but it might have been also some other action which could have been aimed at the bull, and sculptor of the Raging Bull could have claimed that his right of integrity had been violated. It is a difficult situation when one person claims that right of integrity has been violated and other claims that he or she has right to exercise freedom of expression, that his or her action does not violate the integrity of another author. Integrity is a very difficult concept as it is very much connected to the subjective understanding of some violation, not everyone sees a violation in some situation where author him or herself sees. In the conflict between the Fearless Girl and Raging Bull, it was very interesting, that Arturo Di Modica claimed his rights have been violated due to the external action affecting the sculpture, this makes a claim harder to success because Arturo Di Modica should then be able to show how exactly external action is violating the sculpture and his honour or reputation. The question remained was that can a non-physical modification lead to the claim of right of integrity violation. In the right of integrity, the claim roots from the subjective experience from the author, not how other than author see a violation of the reputation for example.<sup>34</sup>

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<sup>31</sup> E. Barraclough. Raging Bull and Fearless Girl – moral rights in copyright. World Intellectual Property Organization magazine 2018 (2).

<sup>32</sup> S. Price. Yale Law School. Charging Bull and Fearless Girl: Conflict between Artists' Rights and First Amendment Freedoms. Accessible: <https://law.yale.edu/mfia/case-disclosed/charging-bull-and-fearless-girl-conflict-between-artists-rights-and-first-amendment-freedoms> (18.03.2019).

<sup>33</sup> Barraclough, *op.cit.*

<sup>34</sup> L. K. Treiger-Bar-Am. The Moral Right of Integrity: A Freedom of Expression. – F. McMillan (ed.) New Directions in Copyright Law. Cheltenham: Edward Elgar Publishing 2006, p. 127.

However, when conflict arises in the court, then in the balancing of rights, the court must use an objective assessment and trust not only to subjective views of the author.<sup>35</sup> Even though the Fearless Girl and Raging Bull case from the United States is highlighting clearly a problem with a claim arising from external action, the focus in this study is to examine cases of a broader perspective where the right of integrity and freedom of expression are in conflict, not only to cases which arise from the external factors.

## 1.2 Establishing Right of Integrity in Finland

Copyright legislation protects the author of the work. Despite the lack of definition of the author at the international level, it can still be inferred that an author is a natural person, not a legal person. It could be understood from the Berne Convention that the protection is aimed at the natural person, not to legal persons as to some company.<sup>36</sup> As copyright divides into economic and moral rights, moral rights again divide to right of paternity and right of integrity.

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Finnish Copyright Act has the following provision regarding moral rights of the author:

“When copies of a work are made or when the work is made available to the public in whole or in part, the name of the author shall be stated in a manner required by proper usage.

Work may not be altered in a manner which is prejudicial to the author's literary or artistic reputation, or to his individuality; nor may it be made available to the public in such a form or context as to prejudice the author in the manner stated.

The right conferred to the author by this section may be waived by him with binding effect only in regard of use limited in character and extent.”<sup>38</sup>

Under copyright law right to paternity is regulated in the first subsection and right of integrity in second sub-section. Work is not allowed to alter in ways which could somehow be detrimental to the authors literary or to artistic reputation, or to individuality. Actions causing

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<sup>35</sup> S. Ricketson, J.C. Ginsburg. International copyright and neighbouring rights: The Berne Convention and beyond, vol 1. Oxford: Oxford University Press 2006, p. 607.

<sup>36</sup> T. Aplin, J. Davis. Intellectual Property Law, Text, Cases and Materials, vol 2. Hampshire: Oxford University Press 2013, p. 119.

<sup>37</sup> Understanding Copyright and Related Rights, *op.cit.*, p. 9.

<sup>38</sup> Tekijänoikeuslaki (Copyright Act of Finland). Adopted 08.07.1961, e.i.f. 01.09.1961. Art. 3. Accessible at: [https://www.finlex.fi/fi/laki/kaannokset/1961/en19610404\\_20150608.pdf](https://www.finlex.fi/fi/laki/kaannokset/1961/en19610404_20150608.pdf) (18.03.2019).

such prejudice described are not allowed. Derogatory treatment can be of external or internal nature. Example of this is a situation where the sculpture would be moved from a certain place, arguing that place, where the sculpture stands, is in connection to the work.<sup>39</sup> It could be argued also that poor lighting in the gallery is affecting to the artwork and therefore to authors honour or reputation because the artwork is not shown properly.<sup>40</sup> In Finland, a violation claim can arise from either internal or external derogatory treatment. Under Finnish law, the author is allowed to waive his moral rights only when the work is to be used in a limited way. General provisions regarding moral rights were incorporated into the Copyright Act, the need for regulation of moral rights was urgent. The need for further overall regulation of copyright was urgent because of the progress of international law and social and technological development. Government proposal regarding Copyright Act notices that copyright cannot be unlimited as sometimes religious, social, educational and other reasons concerning society can impact to the copyright.<sup>41</sup> Protection of moral rights originates from states obligation to adjust copyright legislation in conformity with international commitments. In practice, level of protection still varies.

In the international level, moral rights receive protection from various treaties and conventions, but one of the most important is the Berne Convention. Moral rights in the Berne Convention in article 6 bis are regulated as follows:

“Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation.

The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the country where protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained.

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<sup>39</sup> United States District Court, S.D. New York, Board of Managers of Soho International Arts Condominium v City of New York, Sep 8, 200, No. 01 Civ. 1226 (DAB).

<sup>40</sup> M. Spence. Intellectual Property. New York: Oxford University Press 2007, pp. 127-128.

<sup>41</sup> Finland. Hallituksen esitys (Government proposal). HE/23/1960. p. 2.

The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed.”<sup>42</sup>

Moral rights were incorporated into the Berne Convention in 1928.<sup>43</sup> Berne Convention regulates only minimum protection, protection must be given also to the citizens of other states which are parties to the convention.<sup>44</sup> Even though the Berne Convention lays only minimum protection, many countries have difficulties to be able to follow regulation, especially developing countries.<sup>45</sup> Under Berne Convention and its article 6bis the main protection in the sphere of moral rights come from the prohibition to alter or impose a work to such action which could be prejudicial to the honour or reputation of the author.<sup>46</sup> In regards to the Berne Convention, Finnish legislation is in conformity with protection requirements when examining the text.

Moral rights of the author are enshrined also in the UDHR:

“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”<sup>47</sup>

Rights of heir are not explicitly mentioned in the Finnish Copyright Act however, copyrights can be inherited, and this means that the heirs have their say in the field of right of integrity as well. A provision which makes it possible in Finland to inherit copyright come from provision concerning marital right, heritage, and will.<sup>48</sup> There has been even a case in Finland where heir of a famous deceased singer filed a claim to Copyright Council in order to determine if moral rights of the singer were violated. A famous song of the singer was mixed with another artist singing who was brother to the deceased. According to the heir of the singer, this was against right of integrity of deceased singer. One argument was that, it is degrading to help to promote another singer partly with the expense of the famous deceased

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<sup>42</sup> Berne Convention for the Protection of Literary and Artistic Works, *op. cit.*, Art 6bis.

<sup>43</sup> K. Sorvari. Tekijänoikeuden loukkaus. Helsinki: WSOYpro 2007, p. 174.

<sup>44</sup> T. Dreier, P.B. Hugenholtz. Concise European Copyright Law. Alphen aan de Rijn: Kluwer Law International 2006, p. 32.

<sup>45</sup> Haarman, *op.cit.*, pp. 29.

<sup>46</sup> Berne Convention for the Protection of Literary and Artistic Works, *op. cit.*, Art 6bis.

<sup>47</sup> Universal Declaration of Human Rights, *op. cit.*, Art 12.

<sup>48</sup> Perikunnille. Teosto. Accessible in Finnish at: <https://www.teosto.fi/tekijat/palvelut-tekijoille/perikunnat> (18.03.2019)

singer. Memory of the deceased singer was not therefore honoured, argued the heir. It was seen by the heir that singer would have been kind of resurrected since the joint song received so much attention. The song was about driving a car and the fact why using the song was seen so degrading by the heir was that the singer died in the car accident. Even though parts of the song was mixed with the brother's singing parts, it does not mean that there could not be a moral rights violation. Under the right of integrity, a work is not allowed to alter in a degrading way, even after death, if there is protection time left. The purpose of the joint song in the collection cd was to tribute the memory of the deceased singer and brother. According to the Copyright Council, the moral rights were not violated, as the style in the mixed song was similar than in the original one, leaving out some parts of the original song did not reduce the artistic value of the performance. If use of parts of the song would have been made in degrading way, then moral rights of author could have been violated.<sup>49</sup>

When examining the right to inherit copyright, it must be noticed that in some situations, the author might have waived moral rights in limited situations. This is possible under Finnish law.<sup>50</sup> Legislation concerning the possibility to give up moral rights can vary vastly in different countries, in some countries it is possible to give away all moral rights, in some countries only in limited situations, and in some, it is not possible at all. It is possible to have moral rights, even if the author has given up economic rights. In civil law countries protection of moral rights has been given more weight than in common law countries such as the United Kingdom and the United States. Moral rights are an important part of the interest to create works. Without moral rights, authors would not get credit for the work they have done or could not be protected from the harmful actions towards their work and their honour and reputation as an author.<sup>51</sup> It is important to have moral rights, but it is justified to examine and analyze more of their limits. Lack of moral rights can reduce willingness to use creative talent and this can lead also to reduce economic growth.<sup>52</sup>

The reason why the right of integrity is been protected is that the author is seen to have a special relationship to the work. Every work has little or more author's thoughts, experiences, feelings, and information in it, these aspects make the relationship of the work and author so

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<sup>49</sup> Tekijänoikeusneuvosto (Copyright Council of Finland), 17.09.1998, opinion 1998:15. Accessible in Finnish at: <https://minedu.fi/documents/1410845/3961072/Lausunto+1998-15+Esitt%C3%A4v%C3%A4n+taiteilijan+oikeudet> (29.04.2019).

<sup>50</sup> Copyright Act of Finland.

<sup>51</sup> J.A.M. Chavez. COCopyright and the value of moral rights. World Intellectual Property Organization magazine 2018 (4).

<sup>52</sup> *Ibid.*



special. Purpose of moral rights is to respect the author of the work.<sup>53</sup> Purpose of the protection is not only to protect the author but also to look after educational aspects when work is being altered for example.<sup>54</sup>

Copyright committee who had taken part in the drafting of Finnish Copyright Code noted that when evaluating alterations done upon the work, not every small alteration of the work could lead to the violation of the right of integrity of the author. Council noted also that only grave violation by altering could lead to the triggering of the right of the author to claim right of integrity.<sup>55</sup> In its statement Council did not mean small alterations by size but insignificant alterations. Size of the alteration does not matter because small alteration can be a violation of authors right of integrity and big changes might not fulfill violation of the right of integrity.<sup>56</sup> In case law, it is also decided that correcting language and spelling errors is not seen as violating authors integrity rights. Even minor changes for example in poems could lead to situations when a poem has changed in a way which could contradict with the original meaning of the author has intended, this could lead to allegations from violation of the right of integrity. Such a situation could occur also then when in terms of quality improvement, image is being improved. Alterations can mean therefore adding something, altering something or removing something from the work. Altering the work means, for example, that song is presented in different style, but in a way that people listening to the song can still recognize the original song. Another example is photography which was originally colorful and later changed to black and white style. Alteration is in question also then when music song lyrics are changed in some way. In some cases, alteration is allowed, this kind of situation would be then when the author has given his or her permission to the alteration.<sup>57</sup>

Besides alterations, it is possible to violate the right of integrity due act of vandalism or shortening of work.<sup>58</sup> Under Berne Convention and Finnish Copyright Act, it is also a violation if work is put to such a situation where from the action or context it could be claimed that authors honour or reputation is violated. When work is digitalized, this is not seen automatically as a violation of the right of integrity of the author. This still does not mean

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<sup>53</sup> K. Harenko. Tekijänoikeus, vol. 2. Helsinki: Talentum Pro 2016, p. 67.

<sup>54</sup> Finland. Komitean mietintö, ehdotus laiksi tekijänoikeudesta kirjallisiin ja taiteellisiin teoksiin (Copyright Committee Report, proposal for act of copyright to literary and artistic works). 1953:5, pp. 48–49.

<sup>55</sup> Finland. Komitean mietintö, ehdotus laiksi tekijänoikeudesta kirjallisiin ja taiteellisiin teoksiin (Copyright Committee Report, proposal for act of copyright to literary and artistic works). *op.cit.*

<sup>56</sup> Harenko, *op.cit.*, p.71.

<sup>57</sup> Sorvari, *op.cit.*, pp. 173-174.

<sup>58</sup> Finland. Komitean mietintö, ehdotus laiksi tekijänoikeudesta kirjallisiin ja taiteellisiin teoksiin (Copyright Committee Report, proposal for act of copyright to literary and artistic works), *op.cit.*, p. 49.

that when work is digitalized, the author could never have the right to claim his or her right of integrity to be violated, in such case objective assessment would be performed. If photography is digitalized, it could be so blurry that once digitalized it might be seen to violate authors rights.<sup>59</sup>

Disposal of work was discussed in Finland by the copyright committee who was involved in the drafting of Finnish Copyright Act, according to the committee, it would not be possible to claim a violation of the right of integrity if work is being disposed of. In some situation, disposal could happen because of practical reasons.<sup>60</sup> Such reason can easily happen when there is no room for some work anymore or some work does not please anymore owner of work. However, there could be also such a situation where some artwork is disposed for protesting reasons, in this situation the violation claim could arise, since the reason for disposal is not of practical nature.

Altering the work is not the only way how right of integrity of author can be violated, it can be violated also without altering the work, only by imposing work to such action which is prejudicial to the author's honour and reputation. Such example is the case when work is being used in pornographic work<sup>61</sup> or work being connected to the work which embodies completely opposite ideology.<sup>62</sup> Use of works in advertisements could lead also to the possible violations of the right of integrity. Use of work in advertisement is always assessed from the point of how work relates to the advertisement, and how author him or herself feels about the product or service being advertised<sup>63</sup> It might, for example, be a potential case if angel photography of an author is seen in the video of popular private angel treatment blogger, author of the photography might claim that this action violates his honour or reputation because author would not want to be connected to the person telling of angel treatments. Another example of potential violation of right of integrity could happen in case where artwork is connected to a site which is racial in its nature, such example could be a situation where artist has created sculpture promoting of LGBTQ+ rights, and then the artwork would in some way be used in degrading way to promote anti-gay movements message. Author of the sculpture might claim

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<sup>59</sup> Sorvari, *op. cit.*, p.177-178.

<sup>60</sup> Finland. Komitean mietintö, ehdotus laiksi tekijänoikeudesta kirjallisiin ja taiteellisiin teoksiin (Copyright Committee Report, proposal for act of copyright to literary and artistic works), *op.cit.*, p.49.

<sup>61</sup> World Intellectual Property Organization. Guide to the Berne Convention for the Protection of Literary and Artistic Works. Geneva 1978, p. 42.

<sup>62</sup> P. L. Haarmann. Tekijänoikeus & lähioikeudet. Helsinki: Talentum Media 2005, p. 146.

<sup>63</sup> Tekijänoikeusneuvosto (Copyright Council of Finland), 19.04.2005, opinion 2005:06. Accessible in Finnish at: <https://minedu.fi/documents/1410845/3929208/Lausunto+2005-06+Televisio-ohjelman+otteiden+k%C3%A4ytt%C3%A4minen+tuotteen+mainostamisessa> (28.4.2019).

that his or her rights have been violated due to connecting to the site which promotes totally different ideas, which go against the core of the expression sculpture is trying to manifest and which are core values of the author.

When assessing violations of the right of integrity, it is done on an individual basis. Moral rights and right of integrity more closely are connected to the author as a person, but still, possible allegations need to be assessed from an objective point of view.<sup>64</sup> This makes assessment sometimes very difficult. Factors which are taken into account in the assessment, are relating to the ideology of work has and also to the meaning of work. Ideology and meaning of the work are important, but as important in the objective assessment is to look also to the usage of work, how work is being used and in which type of situations. In assessment, a different type of works can have a different threshold for assessment of moral rights, this is the case in artistic works which normally are deeply related to the author's values and ideologies whereas in computer programmes aspect of moral rights are not so prominent due to their nature and functionality.<sup>65</sup> However, parodies of a certain work are usually allowed but they should not either violate authors moral rights.<sup>66</sup> Interpretation of moral rights is always in close relation to the current time. For this reason, some action which would have been regarded violation before would not objectively be such a violation later. Nowadays freedom of art is more liberal, and this affects also to the interpretation of violation when contrasted to the current era.<sup>67</sup>

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<sup>64</sup> Finland. Komitean mietintö, ehdotus laiksi tekijänoikeudesta kirjallisiin ja taiteellisiin teoksiin (Copyright Committee Report, proposal for act of copyright to literary and artistic works). *op.cit.*, pp.48-49.

<sup>65</sup> Harenko, *op.cit.*, p.71.

<sup>66</sup> Sorvari, *op. cit.*, pp.178-179.

<sup>67</sup> *Ibid.*, p.183.

### 1.3 Protection of Freedom of Expression in Finland

Freedom of expression is part of basic rights. Basic rights are thought to be so important, that therefore they are held in the core of human rights. Basic rights are such which are given special value and they should not be violated. Limiting of basic rights is exceptional and should not be done without good reason. Protection extends to every person in situations where justice system of Finland is in effect. In such situation people who are not citizens of Finland receive also protection from the basic rights protection, this development has come through international law where basic rights are seen to belong to everyone, not just to citizens of some specific country. Legal entities can also receive protection in certain situations. When enjoying the protection of basic rights, it means that there is an obligation towards state not to violate rights with its actions, and also to protect rights from threats and attacks. <sup>68</sup>

Basic rights can be divided to different categories: personal, freedom and legal protection, political basic rights, equality rights, economic, social and cultural rights and so-called third generation rights which could be comprehended also as collective rights.<sup>69</sup> All basic rights influence each other, therefore in a situation where a right of integrity is in conflict with freedom of expression, other rights can also be involved in the situation, and then these aspects must be taken into account in the assessment of conflict too, an example of such a right could be a right to privacy.

Freedom of expression in Finland has gone forward a long way before church and ruler tried to control freedom of expression. Censorship was in effect in Finland until the year 1905. In 1906 under Russian emperor, the law regarding freedom of expression was regulated as constitutive legislation.<sup>70</sup> Finland gained independence 6<sup>th</sup> of December 1917.<sup>71</sup> Content from the 1906 legislation was implemented to the 1919 constitution. After the beginning of the 20<sup>th</sup> century, the wording of freedom of expression has slightly changed, but the content interpretation has remained mainly the same. <sup>72</sup>

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<sup>68</sup> J. Husa. *Julkisen vallan oikeudelliset perusteet: Johdatus julkisoikeuteen*, vol. 4. Helsinki: Talentum 2014, p. 139,164.

<sup>69</sup> *Ibid.*, pp. 139-140.

<sup>70</sup> *Ibid.*, p. 162 p.

<sup>71</sup> Finland 100. Finnish Ministry of Foreign Affairs. <https://finland.fi/life-society/finland-celebrates-100-years-of-independence-in-2017/> (18.03.2019).

<sup>72</sup> Husa, *op.cit.*, pp. 162-163.

Current legislation regarding freedom of expression is regulated in the following way:

“Everyone has the freedom of expression. Freedom of expression entails the right to express, disseminate and receive information, opinions and other communications without prior prevention by anyone. More detailed provisions on the exercise of the freedom of expression are laid down by an Act. Provisions on restrictions relating to pictorial programmes that are necessary for the protection of children may be laid down by an Act.

Documents and recordings in the possession of the authorities are public unless their publication has for compelling reasons been specifically restricted by an Act. Everyone has the right of access to public documents and recordings.”<sup>73</sup>

The first subsection of the freedom of expression provision in the Finnish constitution can be divided into different sections regarding interpretation. First, freedom of expression is something which belongs to everyone, not only to some people. Freedom of expression is not either limited to citizenship. Secondly, freedom of expression is clarified in the subsection. Freedom of expression means that it protects also expression, dissemination and receiving opinions and communications.<sup>74</sup> It can be perhaps easier to understand what exactly means opinions and communication, but term information may be more difficult. Information is a broader term, it can be understood for example as knowledge acquired or act of informing or being informed in various ways.<sup>75</sup> From the general basic rights context and from the proposal of government in regard to the constitution of Finland, it can be derived that freedom of expression has a broad meaning in Finland. It protects the right to acquire, transfer, prepare, express, publish, distribute and receive information, opinions and other communication. Artistic expression is protected under the context of freedom of expression. but it has also a specific provision in the constitution of Finland<sup>76</sup> Because freedom of expression in Finland is understood broadly, the level of protection is on a good level. All forms of expression are protected under the Constitution of Finland. Thirdly, the first subsection prohibits any censorship concerning freedom of expression.<sup>77</sup> For this reason, our press can act freely and trust that they can publish texts which are not to the liking of some instances such as the

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<sup>73</sup> Perustuslaki (Constitution of Finland). Adopted 11.06.1999, e.i.f. 01.03.2000, Art 12. Accessible at: [https://www.finlex.fi/fi/laki/kaannokset/1999/en19990731\\_20111112.pdf](https://www.finlex.fi/fi/laki/kaannokset/1999/en19990731_20111112.pdf) (19.03.2019).

<sup>74</sup> Husa, *op. cit.*, p. 163.

<sup>75</sup> English dictionary. Collins. Accessible at <https://www.collinsdictionary.com/dictionary/english/information> (18.03.2019).

<sup>76</sup> Perustuslaki (Constitution of Finland, *op.cit.* Art.16.

<sup>77</sup> Husa, *op. cit.*, p. 165.

government of Finland. Fourthly, more specific provisions are to be given through legislation. Fifthly, there is reservation in the subsection that additional limitations can be legislated to safeguard children from programmes.<sup>78</sup> Act on Audiovisual Programmes<sup>79</sup> regulates that freedom of expression can be limited for example in such situation when tv-serie or movie contains violence or sexual scenes, in this situation, movie should be presented in such time when children do not watch television<sup>80</sup> Some programmes such as radio or tv-programmes might, for example, be harmful to the children, and in this case freedom of expression might be limited.

Finland has committed to several international human rights instruments. Most important international legal instruments regarding freedom of expression are UDHR<sup>81</sup>, European Convention on Human Rights (ECHR hereinafter)<sup>82</sup> and International Covenant on Civil and Political Rights (hereinafter ICCPR).<sup>83</sup>

Under UDHR the right to freedom of expression is worded as follows:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”<sup>84</sup>

UDHR was a response to the horrible aftermath of the Holocaust, it was seen as necessary to regulate human rights more in order to avoid such horrible happenings in the future. Need for regulation in the area of freedom of expression continues to be justified. Freedom of expression is under threat in the global world and needs continuous protection. Freedom of expression is regulated so widely in different international legal instruments and many countries have committed to these international legal instruments, that it is considered as customary international law.<sup>85</sup>

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<sup>78</sup> Husa, *op. cit.*, pp. 168-169.

<sup>79</sup> Kuvaohjelm laki (Act on Audiovisual Programmes). Adopted 17.06.2011, e.i.f 1.1.2012. Accessible at: <https://www.finlex.fi/fi/laki/kaannokset/2011/en20110710.pdf> (28.4.2019).

<sup>80</sup> Husa, *op. cit.*, pp. 168-169.

<sup>81</sup> Universal Declaration of Human Rights, *op. cit.*, Art 19.

<sup>82</sup> European Convention on Human Rights. Rome 4.11.1950, e.i.f, 3.9.1951, Art 10.

<sup>83</sup> International Covenant on Civil and Political Rights. 16.12.1966, e.i.f. 23.03.1976, Art 19.

<sup>84</sup> Universal Declaration of Human Rights, *op. cit.*, Art 19.

<sup>85</sup> E. Howie. Protecting the human right to freedom of expression in international law. –10 International Journal of Speech-Language Pathology 2018 (1), p. 12.

In ECHR freedom of expression is regulated as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”<sup>86</sup>

ECHR is in effect in Finland as an enactment by Parliament. It can be noted from the ECHR article 10, that it is rather broad protecting all kind of expressions. Artistic expressions are protected also under article 10.<sup>87</sup> According to article 10, limiting freedom of expression must have heavy reason and limitation must have a legal basis. Freedom of expression legislation in Finland follows article 10, the only difference is that in ECHR there are mentioned examples of situations when freedom of expression can be limited. ECHR article 10 regulates especially of the protection of reputation. Under ECHR, article 10 could possibly be interpreted as giving the possibility to raise claim stating that the reputation of the author has been violated. In Finland, the reputation of the author is specifically protected in the Copyright Act.<sup>88</sup> The author could receive support for his or her claims not only from national law and Berne Convention but from other international legal instruments as well.

In the ICCPR freedom of expression is regulated as following;

“Everyone shall have the right to hold opinions without interference.

Everyone shall have the right to hold opinions without interference.

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<sup>86</sup> European Convention on Human Rights. *op. cit.* Art 10.

<sup>87</sup> M., Pellonpää, M., Gullans, P., Pölönen & A., Tapanila. Euroopan ihmisoikeussopimus, vol 5. Helsinki: Talentum 2012, p. 63, 741.

<sup>88</sup> Tekijänoikeuslaki (Copyright Act of Finland), *op. cit.*, Art. 3.

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.”<sup>89</sup>

Under ICCPR freedom of expression is broadly protected as well. In the provision limitations are regulated too, protecting violations to others reputation such as defamation can be a reason to limit freedom of expression.<sup>90</sup>

Even though freedom of expression is regulated in many international legal instruments and therefore being also part of many state`s legislation, is a reality very different. Freedom of expression has experienced many obstacles during the years and is still under a threat. It is vital that freedom of expression is honoured and protected, it is necessary that people can share information, opinions, and communicate. People must have the possibility to express themselves, how otherwise they could for example present artworks of dividing opinions or protest actions of governments. Freedom of expression is closely related to other rights, and if it is not upheld, then other rights such as freedom to assembly and association can not function. Limitations have been set up also in westerns countries to freedom of expression, this is seriously threatening human rights situations. Example of limitations are different anti-protest laws and surveillance over telecommunications data, especially the United States has enacted several anti-protest laws which regulate in different ways protesting. Also, Australia had a law which targeted to prohibit demonstrating even on public land in Tasmania, if protesting prevents, hinders or obstructs passage to business premises. In 2017 law was decided to be unconstitutional.<sup>91</sup> Any limitations to freedom of expression should be extremely carefully assessed and in right proportion.<sup>92</sup>

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<sup>89</sup> International Covenant on Civil and Political Rights, *op.cit.* Art. 19.

<sup>90</sup> Howie, *op. cit.*, p. 13.

<sup>91</sup> Howie, *op. cit.*, p.14.

<sup>92</sup> R, Ollila. Sananvapaus. Pieksämäki: Tietosanoma 2004, p. 52.



## **II. MEANS TO SOLVE THE CONFLICT**

### **2.1 Cases from the Finnish Supreme Court and Appellate Courts**

There are some cases in Finnish case law around moral rights, which have ended up in court, in many situations, the prominent case is examined only in the copyright council which gives non-binding opinions.<sup>93</sup> However, there are some cases regarding the interpretation of moral rights and these cases from Finnish Supreme and Appellate Court create a very important basis for the understanding of right of integrity, to the problem when and how the author could claim his or her right of integrity to be violated. To gain knowledge of situations where the author has claimed that his or her rights are violated under the right of integrity, there are also such cases taken into review and analysis which do not directly encompass conflict situations with freedom of expression. This approach is important, as it is vital to assess how claims concerning a violation to honour or reputation are interpreted.

Case 1967-II-74 from the year 1967 was decided in the Supreme Court. In the case director Theodor Tugai had agreed to do a film about a biography of a certain person. Scripture of the film was not Tugai's, he was supposed to direct the film only. As the lead star got ill in December 1961 and filming stopped for a while, Theodor Tugai took to his tasks also to raw cut scenes which had been so far filmed. In January 1962 filming continued but without Theodor Tugai, there was another director and cameraman. Subtitles were added to the movie and also scenes which Theodor Tugai had directed were mixed with the scenes which were directed and shot by another person. Due to this reason, Theodor Tugai claimed that the artistic value and uniqueness of the scenes he had directed and intended to be part of the whole movie were now detrimental to the original idea. The film was also mixed with another movie which mocked Theodor Tugai's movie in an advertisement film. It was possible to get a perception that advertisement film was trying to advertise the one and the only film which was partly directed by Theodor Tugai, the advertisement did not clear though that it included parts of other movie which were linked to the original movie in the advertisement. Tugai demanded punishment for the directors of the original film. Tugai wanted also that scenes which he had not directed would be removed from the movie and subtitles also, he wanted prohibition for the show until all claims were fulfilled. District Court of Helsinki ruled in favour of production directors and stated that all copyrights were seen to be transferred to the production company

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<sup>93</sup> J., Kortelainen, N., Lefever, & T., Kautio. Evidence for the future: A Review of the Finnish Copyright System. 2018. p. 37. Accessible at: [https://www.cupore.fi/images/evidence\\_for\\_the\\_future.pdf](https://www.cupore.fi/images/evidence_for_the_future.pdf) (19.03.2019).

which oversaw the movie. District court stated that it considered all parts of directing belonging to the company.<sup>94</sup>

District Court of Helsinki stated that it considered also personal rights of Tugai, and they were not violated as Tugai's name was not mentioned in the movie as a director or by his nickname Tulio. For this reason, the first complaint was rejected, and Tugai complained to the Appellate Court. Appellate Court of Helsinki looked again merits of the case and came to the conclusion that even though the number of the scenes directed by Tugai was a very large part of the overall scenes, they did not, however, were seen to connect to a whole work which would mean they have the protection of copyright. For this reason, Appellate Court stated that there was no copyright violation at hands, and also, taking into notice, that rights were originally transferred to the film company bu Tugai.<sup>95</sup>

Tugai did not give up and asked for permission to the Supreme Court. Reasoning changed in the Supreme Court to the favor of Tugai but the court held in force Appellate Courts decisions. The reasoning behind the Supreme Court's decision was that scenes which Tugai had filmed could be seen to construct such work which entitles Tugai to enjoy of the copyright protection. However, it was not seen that Tugai's literary and artistic value and originality were violated when scenes he had directed were connected to other scenes which were directed by someone else. Supreme Court took into consideration, that Tugai's name was not mentioned in the film. Supreme Court stated, that even if scenes taken by Tugai were added to the film which contained scenes from someone else, this connection did not violate Tugai's right of integrity.<sup>96</sup>

Director Tugai, who was also known by his nickname Tulio, was claiming that his right of integrity was violated due to the mixing of scenes with scenes of someone else. It is understandable that if some director has specific directing style, then this can transfer to the audience through scenes. It is still very hard to show how exactly to describe how specific directors work of art shows to the audience when compared to someone else. It is easier to show some similarity in artistic style what comes to paintings, for example, but the directing style might be harder to show. Perhaps if the director could manage to show how exactly his or her directing style transfers through scenes, and how other scenes do not mix well with original director ones, then right of integrity claim could succeed. Director could claim that

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<sup>94</sup> Supreme Court of Finland, 15. 09.1967, case 1967-II-74. Accessible in Finnish at: <http://www.mlang.name/arkisto/KKO-1967-II-74.html> (19.03.2019).

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*

his or her reputation is endangered by such action and therefore right of integrity claim could succeed. If a director would be somebody who is perhaps new in the business, he or she has not been able to gain yet fame regarding his or her directing style as the director is not yet known widely, then it would be harder to argue that mixing of scenes would harm reputation.

Tugai could not prove enough convincingly that his literary and artistic value and originality was violated. It was not a violation to mix Tugai's scenes with other director scenes. In the case a very important factor was that the director's name was not even named in the movie, so people could not so well know that the director was Tugai. In the case, it was concluded in the Supreme Court that Tugai had the copyright to the scenes and he could argue for his moral rights. Indeed, scenes can make up such a set which receives protection from the Copyright Act.<sup>97</sup> Case concerning Tugai was one of the first cases concerning the right of integrity and is, therefore, a very essential part of the case law around the topic. It is shown in the case that threshold for protecting the right of integrity is rather high, the author must have good arguments in order to claim to receive support. In the examination, many factors are taken into account, and reasoning is done from the objective view, giving some weight to the subjective view but not entirely. Reasoning in the Tugai's case has set up a framework for other cases too, how to interpret different cases involving the right of integrity claim. The case remains to be important even though it is quite old already.

In case KKO 1975 II 37 actor Kristiina Halkola- Franck (hereinafter Halkola- Franck) had agreed to act in a movie called "Mustaa valkoisella" (Black in White) between October 1967 and September 1970. Halkola-Franck was the female lead in the movie. The movie included one love scene to which Halkola-Franck was not satisfied when she saw it for the first time, the production team had cut out part of the original love scene to another scene. The scene which was added was a scene where Halkola-Franck was not acting, the scene was also very sexual. Sex scene did not include head of Halkola-Franck, and it could not be known whether or not Franck was the actor in that scene or not, it could be deducted that same female lead acted in that scene as in other scenes. Halkola-Franck argued that she would not have even agreed to act in such a pornographic scene if asked. Franck claimed that her performances artistic value and personality were violated. The additional sex scene was added to the movie without asking permission of Halkola- Franck. Halkola-Franck wanted that showing of the movie would be stopped and additional sex scene would be replaced with material already

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<sup>97</sup> Supreme Court of Finland, *op.cit.*, case 1967-II-74.

taken where Franck was acting, not the substitute- actor. That scene was a love scene but did not include pornography. Director claimed that Halkola-Franck had no right to influence the decisions of direction to use or not to use substitute actors and additional scenes in the movie. Director also claimed that because they had informed the public about the use of substitute actor in the particular scene, then there was no issue anymore and because it could not be seen to cause prejudice to Franck`s moral rights if a sex scene is used.<sup>98</sup>

District Court of Helsinki decided that acting performance by Halkola-Franck did not see to fulfill threshold for work protected by copyright to literary and artistic works. District Court of Helsinki decided also that additional sex scene did not see to cause prejudice to the artistic value of performance or to change her interpretation deducted from her acting job, her personality was not therefore seen to be violated. Halkola-Franck took the case to the Appellate Court which saw too that her acting performance did not receive copyright protection under literary and artistic works. Appellate Court of Helsinki concluded that Halkola-Franck`s claim regarding the literary and artistic value and originality of the performance was accepted but it was not shown that this would have caused damage to her as an artist and therefore no monetary damage claim was accepted. Appellate Court kept the decision made by the District Court. Halkola-Franck was not happy about the decision and applied permission to take the case to Supreme Court of Finland Supreme Court concluded that according to the actor contract, it was not prohibited to use an additional sex scene acted by substitute actor in the film. Supreme Court concluded, as did lower instances, that Halkola-Franck did not enjoy copyright protection to her performance under literary and artistic works. However, the Supreme Court decided that the sex scene was against Halkola- Frank`s artistic performance value and personality. The additional sex scene therefore had implication to the performance by Halkola-Franck in the movie. Supreme Court concluded that because the violation was not possible to remove even by giving information of the actor in the sex scene, therefore scene was ordered to be removed and management of the movie was obligated to pay monetary damages to Halkola-Franck.<sup>99</sup>

Case of Halkola-Franck showed a good example when a certain line is crossed and when the right of integrity violation claim can succeed. Halkola-Franck had acted in love scene which was not considered as pornographic but the scene where substitute-actor was used could be considered as such a scene. The scene was sex scene but Halkola-Franck`s body was shown

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<sup>98</sup> Supreme Court of Finland, 15.05. 1975, case KKO 1975-II-37. Accessible in Finnish at <http://www.mlang.name/arkisto/KKO-1975-II-37.html> (19.03.2019).

<sup>99</sup> *Ibid.*

without her head. A person looking at the scene could not know that the actor was not Halkola-Franck. A normal person watching the movie would perhaps assume that the actor is the same unless person watching the movie would have received information earlier before watching the movie, that actor is not same in the sex scene as in other scenes. Part of the viewers could have received information of the real actor and part of viewers not, right of integrity would have been violated especially in case of those viewers who watched the film without knowing of the substitute actor.

Halkola-Franck claimed that it was against her literary and artistic value and personality if love scene where she was acting was put together with other scene consisting of a sex scene. Supreme Court in its reasoning concluded that author receives protection due to the partial performance in the movie, even though Supreme Court that the author did not have received copyright to the movie or to the acting performance in it. As sex scene was added to her partial performance without asking her, and when it, in fact, changed her acting performance in a way which was in contradiction to her literary and artistic value and personality, it was concluded by the Supreme Court that sex scene was violating Halkola-Franck's moral rights. The sex scene was then ordered to remove from the movie.<sup>100</sup>

The case shows that when an artist is related to action or material which is sexual or pornographic then right of integrity violation triggers more easily. It is rather easy to argue that sex scene or action connected to the author can cause harm to reputation or violate the integrity of the author. If a whole movie would have been a pornographic movie, then using of substitute actor in some certain scene would not perhaps trigger the right of integrity violation, as the lead star would have been otherwise acted in several scenes which constituted of pornographic material. Use of work in pornographic connections is therefore seen as one justification for relying on the right of integrity. However, the problem with balancing of rights between right of integrity and freedom of expression could possibly arise when some work is used for example in a movie or in a document. If some statue from the Soviet times is used in a document which is trying to reliably tell about the victims of purges who were killed or sent to Siberia. Author or heirs of the author could claim that the use of the statue in the document movie is violating a right of integrity as a statue is shown in false connection, a connection which according to the author or heirs is giving misleading information of the whole purges. Author or heirs of the statue have right to claim the right of integrity, but they should give arguments why the document is to their mind false or against the Soviet Union. If

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<sup>100</sup> Supreme Court of Finland, *op.cit.*, KKO 1975-II-37.

the author does not want that his work is used in connections which are criticizing the Soviet Union, the author should be able to show how exactly this is violating authors right to integrity. If in such case it would be found that in fact, the documentary is misleading after examining reliable sources regarding victims of the Soviet Union, then claim regarding the right of integrity could succeed. If the document would only be critical towards the Soviet Union, then it should be accepted that statue is used in the document, as no misleading information was given, authors of the document were merely expressing their views, in other words enjoying of their freedom of expression. People need to have a possibility to criticize and right of integrity claims should not succeed in cases where no misleading information is given which could be connected to some work.

Violation of right of integrity has been under examination also in case 1974 II 49 where translator had been translated text of Jean-Paul Sartre (hereinafter Sartre), and parts of this text were used in the changed form in a screenplay for show. The plaintiff, in this case, was Toini Kaukonen (hereinafter Kaukonen), who had translated Sartre`s text "Les Mains Sales" known as Dirty Hands. Kaukonen had been translated text from French to Finnish. Rights to use translation was given to the Theatre Union of Finland and defendant City Theatre of Turku owned by Turku City which had acquired showing rights from the Theatre Union. Translation by Kaukonen was used in a play in City Theatre of Turku. Screenplay consisted of Kaukonen`s text except for the three first scenes where screenplay was based on another translation by Raimo Meltin. In addition, remaining scenes by Kaukonen were modified without permission from Kaukonen. Modifications consisted of shortening the translated text and replacing words and sayings with different phrases. Kaukonen claimed that these changes violated her literary and artistic view and personality. In the year 1969 Sartre gave prohibition to show play and because of this, group of people responsible for the play went to radio to tell about the happening. Kaukonen claimed that they had been given degrading statements about her on the radio. District Court of Turku decided that theatre had acquired in lawful way rights to use translation in the play from the Theatre Union. What comes to the violations concerning modifications to the translation, the court stated that modifications were such that they would not violate literary or artistic view and personality of the original translation. Court also decided that management did not defame Kaukonen on the radio. Defendant claimed that the reason to modification was that the language Kaukonen had used in the translation was in some part outdated and against normal spoken language. After a loss in the District Court, the case went to the Appellate Court of Turku. As District Court, Appellate Court in its reasoning concluded that the rights to use translation were acquired properly. Besides modifications

done to the translation, the translator was improperly named in the programme of the play. In some programme brochures, Kaukonen was addressed to be the only translator, even though Raimo Meltin`s translation of the text was also used. Later programme brochure was changed in a way that correctly addressed translators. Appellate Court concluded in its reasoning that it saw literary and artistic value of Kaukonen to be violated due to the changes made to the translation. Changes and shortenings to translation were so large in an amount that it can not be seen possible that Kaukonen had been given silent acceptance to them. It was also important to notice according to court, that the words and phrases used in the translation were such which Kaukonen considered being the best interpretation of Sartre`s text. Appellate Court stated that the damage was done to the Kaukonen, but management had not intentionally violated moral rights. Appellate Court saw also that management in the radio did not use degrading language of Kaukonen. Appellate Court decided compensation to be paid to Kaukonen.<sup>101</sup>

The case went to the Supreme Court for further examination, and the Supreme Court concluded that according to it, Kaukonen`s literary and artistic view were violated due to the changes and shortenings made to the original translation. Textually, translation by Kaukonen and Mälkin were different, and in this way texts by Mälkin violated the style Kaukonen had intended to communicate through her text. The style had been violated especially what comes to the language of different persons in the play. Supreme Court agreed with the Appellate Court.<sup>102</sup>

At first in the District Court, it was seen that literary and artistic value and personality of the author was not violated even though translations of Kaukonen were modified and used in the play. Appellate Court concluded that the right of integrity violation had indeed happened. As the case went forward to the Supreme Court, it then concluded that the decision of Appellate Court stays. Supreme court stated in its reasoning that translation of Kaukonen was used in a way which was not appropriate, changes to the text were substantial too. The case is one of the landmark cases regarding moral rights, it was concluded that in literary texts it is always very delicate what kind of changes are done to the texts. In this case, Kaukonen argued that when her text was not used during three scenes and text used in those scenes was Mälkin`s, it, therefore, changed the whole focus of translation Kaukonen had intended to express through text. Words which were used in Kaukonen`s text were acclaimed to be old fashioned, but

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<sup>101</sup> Supreme Court of Finland, 29.05. 1974, case KKO:1974:49. Accessible in Finnish at <http://www.mlang.name/arkisto/KKO-1974-II-49.html> (19.03.2019).

<sup>102</sup> *Ibid.*

Kaukonen claimed that words were used as to best express Sartre's text.<sup>103</sup> It is difficult to argue that some changes of words and phrases would not be violations to author's right of integrity when translator have picked certain words for a reason, he or she has thought those words and phrases to be the best ones to express original text, it is very difficult to argue otherwise. In these situations, the right of integrity seems to be strongly protected.

Editorial changes are a different issue, it seems that the threshold is rather different, text can be changed for editorial purposes, but even then, the changes could lead to a claim of violation of right of integrity, as happened in the case concerning published text in the medical journal where medicine words were changed to other ones, similar ones.<sup>104</sup>

Changing the design of the trademark has been examined also in case HO:1990:320. In this case, design planner had designed trademark for the hotel- restaurant located in the Mäntyharju. The logo consisted of the name of the hotel-restaurant and rooster which sat on the porch. The logo was black and white style. The owner had sold later his hotel-restaurant to a new owner. New owner quit the restaurant business in the old premise and transferred to another location. Name of the new restaurant was different. The issue started from the fact that new owner used logo planned to the old restaurant and to the old name, the new owner used an old logo but replaced the name of the restaurant to correspond with the current name, the owner kept rooster theme but changed the coloring of the logo. The planner of the logo was not happy about this and sued the new owner to a court of copyright infringement. In the District Court, the defendant, owner of the new restaurant said everything was included in the sales from the old restaurant, including logo. After the new owner had started to do business, he had used the logo in the premises of the old restaurant before moving the restaurant to a different location and changing the name of the restaurant to a different one. Defendant thus argued that the logo was used all the time under the same restaurant, even though it had moved to a different location and started to use a different name. For this reason, the new owner argued that copyrights of the logo planner were not violated. The claim of the logo planner did not succeed in the District Court and thus went to Appellate Court. Appellate Court of East Finland then again concluded that the changes to the logo were not so extensive that moral rights of logo planner would have been violated. Changes made in the logo were changing the name of the restaurant and coloring rooster with red color. Appellate Court made a decision that literary and artistic view was not violated, modifications were not seen to be

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<sup>103</sup> Supreme Court of Finland, *op.cit.*, see case KKO:1974:49.

<sup>104</sup> Appellate Court of Helsinki, 28.06. 1989, case HO:1989:902. Accessible in Finnish at <https://ipruc.fi/oikeustapaus/ho1989902/> (19.03.2019).



of degrading nature. Even though Appellate Court decided that there was no violation, dissenting opinion on the matter was given where modifications were seen such which can be seen violating literary and artistic view in degrading way. A dissenting member noted that it can not be concluded however, that violation would have seen to cause suffering or harm. Appellate Court kept the District Court's decision in force.<sup>105</sup>

In this case, the issue was regarding the changing of the logo in its design and this was seen indeed as a modification but not as such modification which would have somehow violated the integrity of the author. It seems, therefore, that it is not easy to claim the right of integrity to be violated even in a clear situation when it is possible to show the actual modification. In this case, the object which was under modification was a logo used in business and the changes were necessary to make, as the restaurant changed its name and moved to a different location. If the logo would have been somehow different, not so common one, then perhaps, the slightest change to the logo could have used successfully to claim a violation of the right of integrity. Copyright Council concluded that change of the name in the logo to a name of new restaurant and change of colour did not result as a violation of the right of integrity, it is essential to notice that author could not show how exactly authors integrity was violated due to the changes. If logo in question would have been very artistic and more unique, then if something would have been changed, the author could have claimed perhaps more convincingly this his or her rights were violated, as even the slightest change modified the expression which work was trying to manifest. In such a case, good arguments would include the argument of how exactly the changes were hurting honour or reputation of the author and message the work is trying to manifest. This case showed that the threshold for claiming the right of integrity is on a high level, and no such claim can succeed without good enough arguments to support the claim.

Freedom of expression can be threatened in a situation where the author of the logo claims some other logo or action is violating his or her right of integrity. If another logo would be made which would attack the original logo with its message, then the author could claim that right of integrity was violated, but then again in situation when another new logo is trying to criticize the message the original logo is trying to express, then limiting criticizing logo can be seen violating freedom of expression. It is not easy to determine what actions are such which could lead to violation of the right of integrity, as freedom of expression must be weighed in every situation. If the original logo has some political message, then it should be

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<sup>105</sup> Appellate Court of Kuopio, 16.02.1990, case HO:1990:320. Accessible in Finnish at <https://ipruc.fi/oikeustapaus/ho1990320/> (19.03.2019).

accepted to criticize the message in it even with means of some other logo. Example of this kind of situation could occur when the author of some political logo, a logo for political party claims that his or her right of integrity is violated because some other logo is mocking original logo. Author of the political party logo could claim that the new logo is influencing his or her logo by altering the expression it tries to manifest. In this situation author of the political logo would try to lean to the external factors which are prejudicial to his or her integrity, it would mean that another logo is altering somehow the meaning of the political logo and is also a violation of author`s integrity. Author of a new logo could try to present counterargument that his or her logo is trying to highlight problems relating to the message original logo is trying to manifest, this is essential right in the democratic society.

Other situation could have been also then if logos which author makes are of black-white style and they are changed to colorful, this has seen to violate authors right of integrity, as the author is especially known for black and white style and colorful logos could seriously harm authors reputation and originality.<sup>106</sup>

In the case regarding published text in a medical journal, the issue was also relating to the modifications done to the original text. Text presented *Cryptosporidium* protozoan which causes intestinal infection. Intestinal infection occurs especially in patients who had lowered capability to resist infections. The text was about *Cryptosporidium* and infections it can cause. The issue in the case was the modification of the text by the magazine where the article was published. Several keywords in the text were changed to different ones, plaintiff saw this as a violation of moral rights because the way plaintiff wanted to express things was changed, the plaintiff argued also that words used were not even suitable to be used in the context and they also subjected author to become a laughing-stock. Magazine denied that any infringement would have happened. Magazine used as a defense reason that magazine rarely published articles without any editorial changes. The author should have also known of the instructions regarding used terminology in the magazine because the plaintiff had already published in it before. Journal agreed to publish an article without any changes in the chronicle, but this did not satisfy the plaintiff. The claim was rejected in the District Court. Appellate Court concluded that it was not shown that modifications would have caused the violation to the moral rights of the author, modifications were not such which could be seen to violate literary and artistic view of the author. Appellate Court did not change the District Courts judgment. The author needed to pay compensation to the defendant.<sup>107</sup> In this case, the journal had done

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<sup>106</sup> Appellate Court of France, first civil chamber, 28.05.1991, no. 861.

<sup>107</sup> Appellate Court of Helsinki, *op.cit.* see HO:1989:902.

editorial changes to the author's text which theme was medical. The author claimed that the new words which were changed in place of some original ones which were making author under laughing-stock. Changed words were not such which the author would have chosen, as they did not reflect what the author tried to accomplish with the text. The author claimed that the changes made authors understanding of Finnish language questionable, in the way which was violating the reputation of the author. Author's claims regarding making an author under laughing stock were not enough to Appellate Court, the author should have had more convincing arguments to support the claim.<sup>108</sup> In this case, the threshold for the right of integrity was once more at a high level. In legal literature, it has been seen that translations of bad quality can be a base for violating the right of integrity<sup>109</sup>, in principle, if the author could have presented arguments more convincingly that changes of words were not appropriate then claim might have succeeded.

## 2.2 Decisions of the Copyright Council

Decisions of Copyright Council are not of a binding nature, but they do have an influence on the jurisprudence and therefore from those decisions can be found also some interpretation approaches to situations when the right of integrity is in conflict with freedom of expression. Not all cases examined here involve competing right of freedom of expression, but they guide to the direction how matters regarding the right of integrity are decided and can give guidance as to what might happen in courts cases involving conflict between the two competing rights.<sup>110</sup>

In case 1989:14 decided by Copyright Council, under examination was whether or not author could claim a right of integrity to be violated due to the transfer of artwork to a different place than it was originally placed. The author had been commissioned to create a two-meter-high wall relief to a hotel. Once relief was completed it was transferred to the hotel lobby, the location for the relief was known from the beginning, and therefore relief was made just for the certain location. The relief was designed in a way which took into consideration changes in the season and in outdoor lighting. Author claimed that it was agreed that the relief would stay in the place where it was designed however, there was no contract in writing about the condition. Issue in the case was that relief was transferred without permission of an author to

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<sup>108</sup> Appellate Court of Helsinki, *op.cit.* see HO:1989:902.

<sup>109</sup> Haarmann, *op.cit.* pp.107-109.

<sup>110</sup> J., Kortelainen, N., Lefever, & T., Kautio, *op.cit.*, p. 37.

a different location, and according to the author, the use of a relief was agreed to limit only to the location it was originally put. The author claimed also that during the transfer, measurements of the relief were changed. The author claimed that the location where relief is now is degrading the artistic value of the artwork because the construction methods could be seen by viewers, and lightning in the new location is different and change of different seasons do not influence the work in the same way as the author has meant. In the original location change of seasons would constitute a part of the work, change of seasons could be seen from the window.<sup>111</sup>

The author is well known internationally and artwork also. The author claimed that the right of integrity was violated. Alongside authors request to the copyright council, was also statement from the Union of Sculptors in Finland, they stated that according to them the transfer of the relief was violating the rights of the author. Union of Sculptors stated that the artwork which was created was whole only then when surrounding factors were connecting to the relief. The relief was the artwork which it was originally meant to be only if it was in connection to the surrounding location and other functions such as lighting. Expression of the author manifests in a situation where relief is enjoying different elements which are in connection to it. Union of Sculptors stated that the transfer could have been possible only then when permission from the author has been received.<sup>112</sup>

Reason for the whole transfer of the relief was extension and modification work done in the hotel. Hotel in its statement said that they did not have agreed on the limitation of transferring the sculpture. The relief was built to the wall, so it was essentially part of the building. Copyright did not take into account this fact since they were examining the situation only from the aspect of copyrights. If the case would have gone to the court, the court should have assessed also the fact that could relief to be seen as part of the building according to the legislation under the sphere of property law. This indeed is a very interesting question.

The hotel argued that it was essential to transfer the relief, and the hotel asked also from the author where in the hotel it could be transferred, but the author was not willing to co-operate. Under the Copyright Act, it is possible to do modification to the building if it is necessary. For this reason, the hotel saw that it was possible to change the location of relief. It was essential to a hotel that it could continue its business. Extension and modification work in the

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<sup>111</sup> Tekijänoikeusneuvosto (Copyright Council), 21.11.1989, opinion 1989:14. Accessible in Finnish at <https://minedu.fi/documents/1410845/3974201/Lausunto+1989-14+Moraaliset+oikeudet%2C+teoksen+muuttaminen> (19.03.2019).

<sup>112</sup> Tekijänoikeusneuvosto (Copyright Council), *op.cit.* see opinion 1989:14.

hotel were really needed. The hotel argued also that copyright can not be connected to the external factors, which according to the author, are part of the artwork also. For these external factors hotel names for example lightning and change of seasons. These are factors which were not evident from the relief itself. Hotel stated also that it had not changed the measurements of the relief.<sup>113</sup>

Copyright Council reviewed the case and concluded that the right of integrity of the author was not violated. Under international law and Finnish copyright legislation, it is not allowed to change work in a way which is degrading to literary and artistic value or to the individuality of the author. Work can not be changed in a way which changes its meaning or character, or in a way which could be degrading to the author. When assessing the changing of work, the reasons behind it are taken into notice. Copyright Council concluded that relief does not stand out in its current location as well as in the old one, however, placement in the new conference lobby do not affect to the author in a degrading way leading to the violation of the right of integrity of the author. Copyright Council could not say if measurements of relief had been changed, if they had been, then the measurements should be restored to their original size. It was difficult to say, whether or not measurements had been changed, as the base for assessment was based on photographs. In weighing whether or not right of integrity was violated, Copyright Council concluded that external factors influencing to the work were not seen to be a physical part of the whole relief, even if the change of seasons would be seen on the surface of the relief. Copyright Council concluded also that the light influencing work can neither be seen part of the work, only in such situations it could be seen in relation to the work if lightning was specially fixed for the work by lamps.<sup>114</sup>

In the relief case author brought into examination external factors influencing to the relief and from there on the claim of violation of the right of integrity. An interpretation which takes support for the right of integrity from external factors can be argued to lead, if successful, to very high protection of authors moral rights. In this case, relief was indeed transferred to a location which was not so favourable to the relief but despite the transfer to another location it could not be seen to violate the right of integrity of the author. When author presents claims that right of integrity of author is violated, then it is very essential always to argue strongly enough what reasons are behind violation, it is not enough to merely state that some external action is prejudicial to the author's literary or artistic reputation or to his individuality. Even

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<sup>113</sup> Tekijänoikeusneuvosto (Copyright Council), op.cit. see opinion 1989:14.

<sup>114</sup> *Ibid.*

though claims go to the core of the author him or herself, it is not enough to decide a case assessing only subjective views, but an objective assessment is always done.<sup>115</sup>

In this case, arguments which author presented were not strong enough. Relief was transferred as it was not anymore possible to keep relief in the original location due to the construction changes done in the hotel, it was either meaning in the first place that artwork is about to be located only there in the lobby. It would seem unreasonable to demand such action without any agreement of such a limitation. The author claimed though that they had agreed of such condition, nothing was written in a paper. From the hotel's side, it was essential to move a relief to a different location. It is noteworthy that in this case, the owner of the hotel tried to co-operate with the author of the location where artwork could be transferred but the author did not co-operate. There was indeed no intent to violate intentionally moral rights of the author. Under Finnish law, modification can constitute a violation if a modification can be seen to be prejudicial to authors literary or artistic reputation or to his individuality.<sup>116</sup> In this case, the modification claim came from external factors such as the location where relief was displayed and what factors were influencing to the relief. According to author lighting and change of season were indeed part of the relief and if these would be changed, then the expression relief is trying to manifest changes and this regards to the modification of relief. Sometimes it can be so that external factors are indeed influencing the work and claim concerning right of integrity claim has the possibility to succeed, but there needs to be quite a high threshold for triggering it because if right of integrity is given too much weight then this can jeopardize other rights such as right to property and right to freedom of expression. If external factors are given too much weight, then this could cause claims which arise from even slightest changes in the environment which are somehow affecting to the work, it would be easy to make up different arguments when something must only affect to the work and to the author, not to cause any physical modification. In physical modifications, it is easier to show that some action is indeed violating the integrity of the author but when a claim arises from external factors impacting the work and the author, assessment becomes more difficult and then the assessment must be done carefully. If relief would have been transferred to for example bathroom then the author could have claimed that this action is violating the reputation and integrity of the author. In order claim to succeed regarding the place of work, the place must be unsuitable for the work, somehow putting it to a situation where work is seen to cause the violation to the integrity of the author. In legal literature it has been seen that

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<sup>115</sup> Finland. Komitean mietintö, ehdotus laiksi tekijänoikeudesta kirjallisiin ja taiteellisiin teoksiin (Copyright Committee Report, proposal for act of copyright to literary and artistic works, *op.cit.* pp. 48-49.

<sup>116</sup> Tekijänoikeuslaki (Copyright Act of Finland), *op. cit.*, Art. 3.

removal of work from the display and putting it to storage has been seen acceptable also.<sup>117</sup> Move of a work to a less favourable place is seen accepted too.<sup>118</sup> There are, however, limits to this, as the bathroom example shows. In the relief case author tried to an argument with the modifications which were caused to the artwork itself and with the unsuitable location of the relief, which was according to the author unsuitable for the work, it was not expressing as well relief as it was in the first location.

Copyright Council stated that the change of seasons and lighting which could be seen on the surface of the relief were not physically part of the work and for that reason, it was not possible to argue that the work had been changed. Copyright Council did a careful job by assessing the claims, taking into account different aspects relating to the external factors which raised the claim concerning violation of the right of integrity. Copyright Council considered the necessity for moving the work and how the new environment contrasts with the work and is there something in the new environment which is violating the right of integrity of the author.

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A solution to problems arising from the proper use of artworks might be for example that author`s express more clearly in the first phase how they wish their work to be used and what factors are influencing to it. If the author is especially against some action such as changing the location of the work, then this should be told in writing. This approach would work perhaps well in commercial situations when some work is especially being commissioned. This does not solve all problems, but it would reduce conflicts due to the reason that use of the work has some conditions agreed. Another solution to reduce the right of integrity violations is to raise general awareness of the moral rights of authors, this would help to reduce moral rights violations in all levels, not only in commercial use. In this way, buyers of art would be more informed about what moral rights are and what kind of implications different use of artwork in some situations might have.

In the sphere of human rights and especially freedom of expression relief case is very similar to the case of a Fearless Girl and Raging Bull. Author of the Raging Bull claimed that the expression what Fearless Girl is manifesting through its existence is constituting a threat to a Raging Bull, claiming that the fearless girl statue prohibits Raging Bull to express manifest which author of the Raging Bull was intended. Author of the Raging Bull, therefore, argued

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<sup>117</sup> T. Kivimäki. Uudet tekijänoikeus- ja valokuvallait. Porvoo: Wsoy 1966, p. 42.

<sup>118</sup> *Ibid.*

<sup>119</sup> Tekijänoikeusneuvosto (Copyright Council), *op.cit.* see opinion 1989:14.

that Fearless Girl distracts the very essence of the statue.<sup>120</sup> Fearless Girl and Raging Bull case show the bigger issue and it is the interpretation of external factors impacting to the work itself, in a case when the work itself stays intact. If external factors are given more weight, then this could be shown especially in the situation where the right of integrity is in conflict with freedom of expression. Even if cases are individually assessed, this might pave way for too strong protection of moral rights by limiting unnecessarily freedom of expression which is very important in human right. Example of such situation would be a case where an author has installed statues of some religious sort and then somewhere near in the area other artist has photography exhibition which is displaying victims of religious terror, and some of the photographs would include a display of victims of the same religion which the statue elsewhere represents. In such case the author of the religious statue could claim that his or her right of integrity is being violated because photography exhibition would be prejudicial to his reputation, it would make him a laughing-stock as the religion is meant to be peaceful religion and statue itself is expressing peace. In such a situation, the author of the religious statue would need more arguments. In legal literary, it is seen that if work is situated in an offensive environment, then this could be used as an argument for violation of the right of integrity.<sup>121</sup> It might be very easy to the argument that environment is offensive such as in the example of a religious statue and photography exhibition which had photos of victims of the same religion as the religion the statue is expressing. Author of the statue might indeed try to the argument that he or she feels that the exhibition makes him under laughing and gives the wrong message, as the religious statue aims to manifest how that religion is tolerant and peaceful towards everyone. One very important factor would be to assess in what proximity is the art exhibition and is it really offending right of integrity of the author. It should be also noted that freedom of expression means that people must endure different, opposing opinions too.<sup>122</sup>

Case 1990:12 decided by Copyright Council was related to the author who claimed that dance show which was presented at the premise where artworks of the author were on the show, was violating the right of integrity of the author. The author had created artworks in such a way which took into special notice the location where they were about to be shown. It can, therefore, be said, that author had taken influence from the premise of the art exhibition to the artwork itself too. Art exhibition lasted for 22 days and in one day there was a dance show in the same place where the artwork was in place. There was an entrance fee to the show and it was shown in the same room where the artwork was at display too. The dance show was in

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<sup>120</sup> Barraclough, *op.cit.*

<sup>121</sup> Kivimäki, *op.cit.*, p.42.

<sup>122</sup> J, Jula, Gylling, H, Gylling, H. A. Taiteen etiikka. Turku: Areopagus 2007, p. 179.



the same room also because dance show received influence from the paintings as well. Dance show happened without permission from the author of the paintings. The author claimed that the dance show violated the right of integrity but also economic rights, as the dance show had used paintings in its performance without permission from the author. The author stated that permission to show the paintings was given only to the purpose of getting to know paintings, not to other activities where paintings would be included.<sup>123</sup>

In the issue, the city who was responsible for the contract with author stated that it was evident already from the beginning that author had meant works to be displayed to the public, to the public which is not known beforehand. Display to the unknown public was stated in the conditions in the contract. City also said that during the dance show, paintings were not used as a property of a show or removed to anywhere. As there was nothing agreed from the prohibition to display paintings as a part of some event, the city concluded that also from this point of view it was possible to hold a dance show in the same room as where were the paintings.<sup>124</sup>

Copyright Council in its statement could not conclude whether the paintings were used as properties or as scenery part of the dance show or not. There was no other supporting information to the matter. Copyright Council did not either receive information on how exactly the author experienced that right of integrity had been violated. Nature of the dance show has been such that it could not have been able to violate artistic value as an author. Copyright Council did not evaluate either claim regarding the use of exhibition premise, as this belongs to the contract matters which the council does not handle. Copyright Council took in its decision position to the claim of external factor leading to the claim of moral rights violation. It could not be assessed that the dance performance was to cause prejudice to the author's literary or artistic reputation or to his individuality, it was evaluated that even if the paintings were presented during the show in the background, dance performance in the same space could not lead to violation of right of integrity, especially because artist had not stated more specific arguments to support the claim.<sup>125</sup>

This case shows very well that authors may use moral rights, especially right of integrity as an argument which does not need deep clarification, authors may merely state that some action is offending them and causing harm to their reputation. These arguments are very subjective by their nature, authors should clear arguments about why exactly something is considered by

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<sup>123</sup> Tekijänoikeusneuvosto (Copyright Council), *op.cit.*, opinion 1990:12.

<sup>124</sup> *Ibid.*

<sup>125</sup> *Ibid.*

them as a violation of their moral rights. In this case, the author could have used arguments which would have shown that the dance performance was, for example, contrary to the ideology in the paintings. Even if the ideology of the dance performance would have been totally different, it could have been accepted that the dance performance can be held at different location at the museum and the author could not have used argument, that performance of opposite ideology in the third floor is derogative to his or her reputation due to the fact that exhibition of the author is on the first floor. The threshold to raise a claim based on the violation to the right of integrity seems to be on a very high level, and the author is expected to give clarification to the claims, not just stating something very general. This approach is very good because it protects the unnecessary limitation of freedom of human rights. In this case, the author did not give any other explanation rather than dance performance was violating the rights of the author as paintings were displayed in an offensive manner, the author did not manage to clarify this argument. It would be very easy to state that works have been displayed in an offensive manner due to different external factors and merely referring only to the external factors without explaining further, if this would be possible, then it would seriously affect to the situations where a right of integrity conflicts with freedom of expression. In some case, it could be that there is some exhibition of opposite ideology in the same room, which is seen in the legal literature as a valid argument<sup>126</sup> but then there might be cases where some factor is influencing only distantly such as different ideology exhibitions in different floors or not at all. It is a good question that would it be right from the perspective of freedom of expression that claim would have been accepted due to the reason that in the first floor there are paintings which are from the same subject as paintings in the last floor. The only difference would be that the authors would see things from a different angle. Would there be a possibility to raise a claim if some paintings include even some critique against the same topics in some other paintings. Freedom of expression means that “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”<sup>127</sup>

If claims would be accepted based on moral rights in a situation where there are two different exhibitions at the museum and another one involves even some critique against some part of the subject of an exhibition which is held at display in some other floor, then this could be seen contrary to the meaning of freedom of expression. The situation might not even be

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<sup>126</sup> Haarmann, *op.cit.* pp.107-109.

<sup>127</sup> Universal Declaration of Human Rights., *op. cit.* Art 19.

located at the museum where a claim could arise, this happened in the New York in case fearless girl versus raging bull, and in that case, the argument was that fearless girl was threatening the raging bull. The case did not go to court, but it showed how complex conflict between the right of integrity and freedom of expression can be. It is reasonable to museums avoid unnecessary fights by planning well exhibitions, but they should not start to be overcautious because of some possible moral rights claim, this could only give the impression that right of integrity is weighed higher than promoting freedom of expression. If museum has an exhibition on the fourth floor which tells about victims of domestic violence and some paintings tells of a victim which suffered from domestic violence because he or she wanted to change to different religion, then if in the first floor is exhibition from the history of some religion, then it could be seen unnecessary and unproportionate to remove painting from upper floor, as it was only one painting. In such a situation normal museum visitor would hardly even think that exhibition which is consisted of different religions victims is aimed at the exhibition on the first floor of history of some certain religion. The situation might turn out different if exhibitions are heavily for and against the same topic and when this happens in private property such as a museum.<sup>128</sup> It is very alarming if museums and other instances start to limit exhibitions or freedom of expression too easily without carefully assessing claims. Aim of the museum should not be to cause moral rights conflicts, but if such conflict arises, then expertise should be used in order to assess the situation.

Case 2017:3 was connected to the situation where applicant wanted to receive clarification whether or not the right of integrity was violated in a situation where the city had clothed sculptures temporarily as part of dance groups performance. It is noteworthy in this case, that the applicant was not any of the authors, it is possible to ask the opinion of Copyright Council even if own interest is not directly at the stake in the matter. The applicant had stated that sculptures were clothed starting from 16<sup>th</sup> of April until the 1<sup>st</sup> of May. Clothing was such which was could be understood as a statement. Another action towards sculptures was the fact, that dance group in its performances danced around sculptures. Also, photos were taken from the sculptures, the idea for taking photos was that they could be used in the exhibition in the library. The applicant had asked from the city whether the city had permission for such action and received answer affirming that permission had been received from the management, and also from the authors of sculptures. Leader of the dance group was the one who acquired permissions from the authors. The applicant asks from the Copyright Council

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<sup>128</sup> Museums & Galleries: Obligations in the Age of Digital and Moral Rights, Arts Law Centre of Australia, 30.09.2002. Accessible at <https://www.artslaw.com.au/articles/entry/museums-galleries-obligations-in-the-age-of-digital-and-moral-rights/> (19.03.2019).

who determines the border when the artwork is accepted and when acceptance may not be any more valid. Applicant asked from the council also, that who determines when the author or artwork itself is seen to be violated. Applicant asked also whether or not people were equal when at a certain point it was not anymore possible to see original sculpture without the statement clothing.<sup>129</sup>

Copyright Council examined the case and noted that the clothes which were put to the sculptures were from different time era and they covered original sculptures partly. To the question who interprets the threshold when the author or artwork has been violated under moral rights protection laws, Copyright Council concluded that the claim must come from the author. The author raises a claim if he/she evaluates that right of integrity is violated if there are merits to the claim. Copyright Council stated also that permission to cloth sculptures was acquired already and authors had agreed to the temporary modification of their sculptures. As there was no claim from the side of authors for any violation, it was not possible to examine whether or not the clothing of sculptures was in violation of authors right of integrity. It was essential that permission to modification was acquired. Copyright Council answered also that the line between accepted and questionable art is left for people to decide, in general, it is always seen as taste- and moral question. Also, questions regarding citizens equality did not fall to the scope of the Copyright Council.<sup>130</sup>

In this case, permission from the authors was asked, so everything was fine from that point of view. Even if other people, other than the author him or herself feels that the integrity of some work has been violated, it only the author who can raise a claim, as the right of integrity is in the core of personal rights of an author. If some statues are seen to be somehow violated due to some action and people are angry about it, people can not claim moral rights since they are not the authors. However, people have the right to enjoy works in their original form, in this case, the state would have an obligation to protect the works.<sup>131</sup> If permission would not have been asked, then the authors should have shown that their literary and artistic value and individuality were violated. As the statues would no longer be in their original form, the message they express is not the same author intended, if a case for clothing would have been removed, then the clothes would have been most likely removed from the statues as to return the statue to its original form. In this situation, protecting the statues would be the first priority,

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<sup>129</sup> Copyright Council, 07.02.2017, opinion 2017:3. Accessible in Finnish at: <https://minedu.fi/documents/1410845/4147559/Lausunto+2017-03+Taideteosten+tekijanoikeussuoja> (19.03.2019).

<sup>130</sup> *Ibid.*

<sup>131</sup> Haarmann, *op.cit.* p. 102.

since their physical appearance had been clearly changed without permission. In a situation where a claim is based on an external factor, it is more likely that the state must think longer whether or not it has grounds for limiting the freedom of expression.

One other example of a situation when a violation of the right of integrity could have been limited is the case when some religious or political statue is clothed with erotic clothing. In such a case, the violation would be more obvious, as the physical appearance of the statue had been changed and the message of the statue changed. This case was taken to the study as to highlight the difference between physical and external factors influencing in the interpretation of the violation. If statues were to be clothed without permission, then persons clothing statues might claim their right to freedom of expression, this claim could fail as the right of integrity could be seen to be broken by changing the appearance of the statue and message of the statue. In such a situation, the author should show that the modification somehow is prejudicial to his or her literary and artistic value and originality. Regarding the modification of the statue, authors waived their right of integrity to the extent which was known, if the clothing would not have been what was agreed, then authors could have claimed violation to their right of integrity. Authors could then argue that the clothing is to embarrassment or to humiliation to them.<sup>132</sup>

Copyright Council have in its decision 1995:01 examined also how a claim of external action towards Mannerheim statue (See Appendix 2) is contrasted to the violation claim right of integrity. In this case, the Ministry of Environment has asked decision from the Copyright Council. Author of Mannerheim statue had complained to the Ministry of Environment of the plans of changing environment near the statue. Author of the Mannerheim statue has complained of the change of environment plan to the Ministry of Environment claiming that the change of environment plan violates his right of integrity. Author of the statue has claimed that the plan of building a new modern art museum violates his right of integrity. The author has not earlier told any restrictions to the use of statue. The author has claimed that under Finnish Copyright Act author can resist such modification to the work which is prejudicial to the author's literary or artistic value or to his individuality. An author can raise a claim also from such action which is in connect to the circumstance how work is being presented to the public. Author of the statue claims that if the museum is being built to the current place, it changes the expression statue is manifesting also through the environment. Statue aims to express the moment when Mannerheim arrived in Helsinki 1918 and when Mannerheim was

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<sup>132</sup> D. P. Ilas. The Moral Rights of Performers from a Human Rights Perspective. Lund: Master's Thesis, University of Lund, 2004, p. 21.

to be received by the management of Helsinki. Statue aims to give a view that it dominates in the area. The author sees that it is not impossible to deliver the expression of declaring power and legitimacy if the environment around statue changes. The author sees that only changes which could be accepted are different transport roads and market places. If these would be built around a statue, then the author would not claim the right of integrity to be violated. Modern art museum according to the author is putting a statue to shadow because the museum would become so outstanding from the outer look and look of the museum would also be totally different than is the look of the statue. The museum would be of a totally different style. Granting building license to the museum would change the character of the statue and change expression statue aims to manifest. The author claims also that the area allocated to the museum would be best suitable to be used as a park or leave untouched. The city of Helsinki has given information of the nature of the premises in connection to the building of modern art museum, place where modern art museum has been thought to locate at is an area which is meant for all types of changes. In the process of planning contest, it was evaluated that statue can stay where it is and is not needed to be transferred anywhere else. Board of Helsinki has in its statement said that if the area would not be built, it would be left unfinished and this would not be the purpose. In the plans, the statue is not decided to be changed anyway, the only change is in connection to the granite base on which the work is standing. The extent of the granite base was to be changed in some amount due to the construction of the museum, but this would leave rider statue untouched. The granite base is base for the market square area in general where the statue stands also. When statue initially placed to its current place it was seen that the area was unfinished and would surely be changed during the coming years. The city of Helsinki sees that the value of the statue does not change because of the construction plans of the area and museum. According to the city of Helsinki construction would not disturb or violate the value of the statue also because in the background of the statue is still government building of Finland and the national museum. Modern art museum again would give a calm background to the statue on its side. History of the statue was acknowledged and taken into account during the planning phase of the museum. Factors which were taken into account were, for example, historical meaning, its tradition, and its look. One of the arguments was also that if the author's claims would succeed then this would extend the moral rights protection to a tighter direction than currently regulated in the law. There is no

supporting judicial literature to support the claim which gives moral rights such large application.<sup>133</sup>

Copyright Council examined the case and concluded that it did not evaluate the right of integrity to be violated. In its reasoning, Copyright Council noted that the background of the statue will be changed due to the construction of modern art museum but in general the background will change only a little, as the surroundings of the statue are still the post office house, government building, and the national museum. Copyright Council acknowledged the impact of changes in the background but assessed that changes did not constitute a violation of the author's right of integrity. What comes to the claim of a granite base, Copyright Council stated that the base was built in order to act as a holding base for the statue, the base was also designed by different persons than the author. Copyright Council sees that it does not make base and ceremony area as a part of the statue if it merely makes possible the standing of the statue. Solutions regarding granite base are so ordinary that anyone could end up to the same solution, it is not therefore protected under the Copyright Act. Copyright Council stated that granite base and ceremony area are not part of the statue, and therefore claims regarding changes are not accepted. In this case, it was important whether or not the base granite and ceremony-area were in connection to the work, because if they would have been then the claims could have had more influence on the reasoning, to the assessment how modification of statue must be reviewed. In this case, important were also claims based on the external factor influencing to the artwork such as background, as the author was claiming that due to the changes in the environment the statue would no longer be able to express such manifest which it was supposed to do.<sup>134</sup>

In this case, the author of the Mannerheim statue was claiming the right of integrity violation to be due to external factors too as in previous cases. The author claimed that the statue is not able to express that manifest which he was meant statue to do. The author claimed that the building of a new modern art museum beside statue and change of setting would mean that the statue is not able to transfer anymore message which was in connection to the power and legitimacy. The author claimed, as in relief case too, that the work was designed to the original place and changes to that initial environment would lead to violation of the right of integrity. In the relief case, the author claimed also that relief was not anymore that relief, piece of work, which the author had meant it to be. The author claimed that external factors such as lightning

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<sup>133</sup> Tekijänoikeusneuvosto (Copyright Council of Finland), 07.02.1995, opinion 1995:01. Accessible in Finnish at: <https://minedu.fi/documents/1410845/3971944/Lausunto+1995-01+Taideteos%2C+moraaliset+oikeudet> 22.3.2019).

<sup>134</sup> Tekijänoikeusneuvosto (Copyright Council of Finland), *op.cit.*, opinion 1995:01.

ad change of seasons were not anymore visible on the surface of relief in the new placement. In that case also the change to a different space indeed was not as favourable to the work as in the first location, however, Copyright Council concluded that author did not present good enough arguments as to how the placement of the work in a new location is violating authors integrity. In Mannerheim statue case author tried to defend with the expression by what the statue means to manifest and with the argument that granite base which holds the statue and ceremony are part of the statue and due to the new plans and changes to those, it would change statue too. Author of the Mannerheim argued also, that modern art museum is leaving statue to its shadow and in overall changes in the background are disturbing to the statue and to the author as well. In Mannerheim case external factors were examined in depth too, the author provided several explanations to state why his right of integrity would have been violated but Copyright Council decided that taking all these arguments into account, it could not be seen that authors right of integrity was violated. It is necessary to note from this case, that it was given weigh also to the fact that area was unfinished and there was intent to build more. In Mannerheim case and in relief case moral rights were not intended to violate, there was a purpose for the changes which was justified. For violation claim of right of integrity to succeed in external cases, the arguments must prove to be quite heavy. If Mannerheim statue would have been left to the shadow of some temple, then perhaps the author could have used arguments which conclude that the place of a statue is mocking the statue and violating the dignity of the author.

Case concerning Mannerheim statue and external factors is very similar to the Fearless Girl and Raging Bull case too. Legislation around moral rights is somewhat very broad and open to interpretation, and therefore it is possible to draw even very broad relations to the integrity of work and author. This causes problematic situations since in some situations author indeed must receive protection regarding the external factors which are seen to cause violation of the integrity of the author, in some cases claims from violations can rise even from slightest changes in environment or from some elements. It seems that it is rather easy to come up with an argument that the right of integrity is violated since the interpretation from the author's side based on so subjective view on the matter. Right of integrity is a very vital element in the copyright protection but it can easily create conflicts especially in cases which involve external factors from which the violation claim arises. Right of integrity is protecting the author and his or her literary or artistic value and originality. Right of integrity protects the author when he or she feels and can show that his or her honour or reputation has been violated. As honour and reputation are also very subjective matters, it is hard to conclude an



objective assessment of whether or not a violation has happened. If the reasoning is not carefully done it can give to right of integrity too strong protection which could harm freedom of expression unnecessarily. Problematic situations concerning limiting freedom of expression can arise if too subjective views from the author are accepted and claims are not carefully assessed objectively, as is supposed to. In a democratic society, it must be possible to express one's thoughts and share information, how it would be possible to exercise one's freedom of expression if an expression can be rather easily turned down because of claims of moral rights violations. Example of case would be that the author has made different statues around the city which are trying to manifest through expression traditional family values, condemning liberal family values, then some performance group would dance near statues to communicate their opinions of the matter, which are pro-liberal family values, violation claim could have arisen, but this would seriously block freedom of expression if for example dancers were to be seen violating freedom of expression. Proximity could be important factor when assessing the claim, could author claim that pro-traditional family statues violate his or her integrity when they are not in seeing distance, but their expression is to oppose saying of the liberal family value statues. If far-reaching claims are to be accepted in the name of protecting the author's moral rights, the consequences can be terrible, limiting freedom of expression too much and in this way causing also self-censorship as authors and citizens would not be able to express themselves for example against some expression which some works deliver, author's and people would start to act in a way which is not mark of a free society. As in legal literature, it has been named that opposing ideologies are one justification to the situation when the right of integrity claim might be raised<sup>135</sup>, it should be questioned in which situation this can be used and what limits it has, since if it is applied too broadly, then especially political counter expressions are jeopardized. Right of integrity should never be used as a loophole to limit freedom of expression unnecessarily, the threshold for limiting should be very high and it should be balanced that what is the result for the author and what is the result to the other author, person or group or society in whole.

### **2.3 Balancing of the Two Competing Rights**

Copyright legislation in Finland regarding moral rights is in conformity with Berne Convention. Finnish legislation and case law start from the point that in order claim of right of integrity violation to succeed, an author must present reasons for violation and show that changes done to the work have indeed violated the integrity of the author. It is not enough to

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<sup>135</sup> Haarmann, *op.cit.* p. 146.

merely state that change is done to the work, but the author must be able to argue why changes were derogative to his or her literary and artistic value or individuality. Finnish Copyright Act regulates that “A work may not be altered in a manner which is prejudicial to the author's literary or artistic reputation, or to his individuality; nor may it be made available to the public in such a form or context as to prejudice the author in the manner stated.”<sup>136</sup> Finnish legislation, therefore, protects the work from any alterations which could somehow harm reputation or individuality of the author. Copyright Act protects the work from any alterations or prejudicial actions, but the author is always the one who subjectively can claim if the right of integrity is violated, as the right of integrity is based on the protecting the author him or herself. It is always the task of the author to evaluate if the right of integrity was violated since it is a subjective view. In the examining of a violation, the subjective view is given some weight but analysis whether or not right of integrity is violated is done from the basis of objective analysis.<sup>137</sup> Objective analysis is also the stepping stone which is very crucial when assessing if a right of integrity is violated or not if the subjective view is given too much value, then exercise of other rights such as freedom of expression might be limited too much. Especially problems seem to lie in cases where the author claims that some external factor is causing violation of the right of integrity, in cases where physically work has remained the same. Right of integrity is an important right but it should be protected in the right proportion to the aim of protecting the author and keeping in mind that in democratic society opposing ideas need to be tolerated if people would not be able to criticize then society would not be democratic anymore.

In Finland, copyright violations go usually to the Copyright Council which is an advisory body who gives non-binding decisions, but whose decision is highly influencing the case law in courts. Taking a claim to the Copyright Council is voluntary but it is also free, and for that reason, the Copyright Council is very popular. In addition to the financial aspect, Copyright Council accepts also cases where an applicant has no interest at stake, it is possible to ask the opinion of some matter even if a claim has not even raised. Different copyright organizations could, for example, ask clarification to some case or to some understanding of legal provision. Copyright Council have good expertise on copyright-related matters, they do not examine any other claims than claims concerning copyright-related matters. People deciding cases in the Copyright Council are leading experts in intellectual property rights. Due to the popularity of the Copyright Council, traditional courts do not receive so many intellectual property rights

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<sup>136</sup> Tekijänoikeuslaki (Copyright Act of Finland), *op. cit.*, Art. 3.

<sup>137</sup> Finland. Komitean mietintö, ehdotus laiksi tekijänoikeudesta kirjallisiin ja taiteellisiin teoksiin (Committee Report, proposal for act of copyright to literary and artistic works). *op.cit.*

related claims, especially cases involving moral rights have in many situations were left only to the Copyright Council. As decisions of Copyright Council influence the interpretation of the right of integrity cases in courts, due to this reason Copyright Council decisions have been taken under examination as well.<sup>138</sup>

Legislation, case law, and legal literature have shown during the examination that Finland protects well authors moral rights and enforcement of them works fairly well too. A bigger issue is, in general, long waiting times until the case is decided in court.<sup>139</sup> Finland has even received many admonitions from the European Court of Human Rights of too long waiting times until cases are decided.<sup>140</sup> Perhaps, for this reason, people want to send first their case to the Copyright Council to see how the case could succeed in the court.

When a case regarding the right of integrity violation arises, firstly the examination starts from the analysis of whether or not work was modified in some way or used in some situation. If it is shown that work indeed was modified in some way or predisposed to some action or to some situation then analysis continues to establish whether or not this action was such which is prejudicial to the literary or artistic value or personality of the author. A committee which was drafting Copyright Act has worded in its committee report that protection could be awarded then when work is in an egregious way under vandalism or being mutilated or under some similar action. Committee held that subjective view of the author is given weigh but not entirely.<sup>141</sup> It is understandable from the committee's report, that threshold for protection is very high, and meaning is not to give a possibility for too broad application of the right of integrity, the purpose would be to get protection from grave actions violating the work and therefore the author. Report of the copyright committee or provisions in the Copyright Act do not say anything about considering also freedom of expression when assessing the scope of the right of integrity. Principles regarding freedom of expression are being deducted through analysis from other parts of legislation, case law, and legal literature. Report of the copyright committee leave much of the interpretation to the courts regarding the question, what is the relationship of the right of integrity with the freedom of expression. For this reason, it is possible to get only partial support for the analysis from the committee's report. In legal literature, it has been interpreted that right of integrity could be violated when some work is

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<sup>138</sup>J., Kortelainen et al, *op.cit.* p. 37.

<sup>139</sup> Vuositilastot. Markkinaoikeus (Market Court of Finland) Accessible in Finnish at: <https://www.markkinaoikeus.fi/fi/index/markkinaoikeus/tilastoajakasittelyajat.html> (19.03.2019)

<sup>140</sup> J. Seppälä. Euroopan ihmisoikeussopimus edellyttää: Oikeuskäsittelyihin sujuvuutta, kansalaisille oikeussuojaa. Lakimiesliitto. Accessible in Finnish: <https://lakimiesuutiset.fi/euroopan-ihmisoikeussopimus-edellytt-oikeuskasittelyihin-sujuvuutta-kansalaisille-oikeussuojaa/> (19.03.2019)

<sup>141</sup> Finland. Komitean mietintö, ehdotus laiksi tekijänoikeudesta kirjallisiin ja taiteellisiin teoksiin (Committee Report, proposal for act of copyright to literary and artistic works), *op.cit.*, p. 49.

moved to a degrading place which is putting work into a bad light and therefore author's honour and reputation too. It has not been seen that transfer of a work into another museum or to storage would mean that right of integrity as such is being violated.<sup>142</sup> Such claim arose when Copyright Council received a claim from the author who claimed that transferring relief from original location to a new one was violating the right of integrity of author, Copyright Council stated that change from the hotel lobby to conference did put work to a less favorable position but new location was not so degrading that it would have been seen to cause harm to the right of integrity of author. It was an important factor in the case that the hotel who commissioned the relief had not signed any written contract with the author that relief should always stay where it is. Reason for changing the location was only due to the construction done to the hotel.<sup>143</sup> If relief would have been transferred to a toilet, then a most likely claim of right of integrity would have succeeded.<sup>144</sup>

Especially in the case of commissioned works, author and the person ordering the work might perhaps always agree if work is to be used only in a certain area or what actions the author considers violating the right of integrity. It is impossible to be prepared for all kind of situations where moral rights can be violated, but if author and buyer would agree with some general framework or "user manual" for the work, then disagreements could reduce. One good idea would be to discuss if an author is ready to give waive moral rights for certain specific use, such as using painting in some certain areas in the hotel excluding places which are generally held derogative such as a bathroom. Buyers should be better educated of moral rights, and authors should be better educated on how they should communicate and negotiate with the buyer of the using of work. If the author and buyer would more comprehensively agree on terms and conditions for using the work, then this would make using of work more flexible as not every change would be needed to consult from the author. The same approach should be adopted generally when for example city orders some work of art, it should clarify to which area work is being ordered and what implications environment sets up to the work and what future plans area holds. This kind of problem arose in Mannerheim case when the author claimed that the construction of a new modern art museum would violate authors right of integrity by changing the environment and putting statue into the shadow of the museum. It is possible to avoid some conflicts by having more communication with the author, but it does not remove all problems. It is possible to do contracts and give away moral rights for some specific use, but it is not clear what is seen as giving moral rights too widely, problem

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<sup>142</sup> Kivimäki, *op.cit.*, p.42.

<sup>143</sup> Tekijänoikeusneuvosto (Copyright Council), *op.cit.* see opinion 1989:14.

<sup>144</sup> Sorvari, *op.cit.*, pp. 180-181.

could arise if the author has given up of his or her moral rights for some specific situation but sees later that the agreement in that part is void since given moral rights were too broad. Problem could be that how different instances and the author can make such contracts which are clear enough on the moral rights provisions, if the agreement is not clear, it might go to court. Therefore, an overall discussion of the use of work and clarifying it in the contract could reduce conflicts but giving up in limit way moral rights is more difficult and can cause even more problems later than clarification.

Freedom of expression view was not brought directly into question in relief case but claim arising from external factors is such which could include the possibility of limiting freedom of expression too much. Relief case<sup>145</sup> included elements of external factors but other cases where freedom of expression was more present was dance performance show in which author claimed that dance performance around paintings was violating the right of integrity, as the author claimed that paintings were used as some kind of background for the dance show. Copyright Council decided that right of integrity was not violated because the author had not agreed with the art exhibition place of no such conditions that only exhibition visitors would be able to see paintings, no prohibition of the performance group was agreed either. It was indeed a situation where works were used but action should have been such which would have seen somehow violating the author's integrity. Such a situation could arise if the purpose of the dance group was with its dance to protest the paintings. In legal literature, it has been seen that opposing ideologies can act as a reason to claim a right of integrity.<sup>146</sup> In art exhibition place, the author could claim that because dance performance with opposing ideology came so near the paintings, that they were actually mocking the paintings and author. This kind of claim could succeed, but the situation where dance is performed in a public place, could the outcome be a different situation. When an author places his or her artwork at display in public place, then the author always knows that it can face also criticism and other actions due to its location.

Right of integrity has proven to be in balance in cases in which works have been some way directly modified or altered. One of the first landmark cases in the sphere of the right of integrity were ones decided in the Supreme Court of Finland. Case 1967 II 74 (Tulio)<sup>147</sup> examined were moral rights of director violated when scenes which he had directed were joined together and mixed with scenes of another director. The set of scenes were modified

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<sup>145</sup> Tekijänoikeusneuvosto (Copyright Council), *op.cit.*, see opinion 1989:14.

<sup>146</sup> Haarmann, *op.cit.*, p. 107-109.

<sup>147</sup> Supreme Court of Finland, *op.cit.*, case 1967-II-74.

when they had been joined and mixed with other director's scenes. The movie was also advertised in a bad way which was prejudicial to authors reputation. Supreme Court held that scenes directed by Tugai were seen to constitute a whole set. As the name of the director was not mentioned, the Supreme Court saw that the literary and artistic value and personality of Tugai were not violated. Even if the name of the director would not have been mentioned then if the director is very popular there might be many people who still know that that movie is directed by him, as many newspapers could have told about the new upcoming film. In assessing the case, Supreme Court applied right of integrity in a very strict way, it did not accept the claim that joining and mixing of Tugai's scenes with other director's ones were to violate Tugai's right of integrity. Tugai did not seem to present clear enough arguments as to why mixing and joining of scenes violate his right of integrity. Perhaps if director could have claimed that he is very famous director and scenes which he directs are some way unique, his directing techniques would manifest through scenes which he had directed and if joined and mixed with others, then this could confuse viewers as they could think that all scenes were directed but Tugai but the style in certain scenes was not typical to him and this was harming his reputation. As the case was very fundamental in Finnish case law, it concluded that author did receive protection to the scenes in whole which he had directed and also Supreme Court established that the threshold for triggering the right of integrity is rather high and it did not uphold the very broad application of the right of integrity.<sup>148</sup>

Case KKO 1975 II 37 was concerning of actor who had acted in several scenes in the movie, including also romantic scene. Later additional scene was added to the romantic scene where substitute actor acted in the sex scene in a way which did not show actors head. It was not clear to people that female lead actor was not acting in the sex scene, female lead actor would not have agreed to do such scene even if asked and this was according to author violating her honour, as people would think that she was acting in the sex scene. Defendant claimed that the public was informed that the actor did not act in a certain scene but there was a substitute actor acting in it. Supreme Court held that despite the informing of the people, it was still seen to violate the integrity of female lead as a violation could not be removed by information. It was established in the case that when a sexual connection is created linking to the author then right of integrity claim has good chances to succeed.<sup>149</sup> If female lead would have before performed in naked scenes, then arguments of violating the right of integrity of author could not perhaps be met, as the author would have with her behavior showed association to the

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<sup>148</sup> Supreme Court of Finland, *op.cit.*, case 1967-II-74

<sup>149</sup> Supreme Court of Finland, *op.cit.*, KKO 1975-II-37.

naked style scenes. In this case, protecting the actor was seen as more important than giving permission to use the sex scene. Objectively assessing harm to the female lead actor was easily understandable, it is possible to assess that if some sex scene is connected to the actor who does not perform such scenes, can be in fact a violation of the right of integrity. The case has been landmark case because it answers to question in its part what can constitute a violation of the right of integrity, linking to sex scenes can be such reason, but it must be assessed objectively also. It can be concluded also that it should not be an automatic reason for claim to succeed if the author claims that his or her right of integrity was violated due to the linking or connection done to some opposite ideology, claims must always present clear reasons as to why something is violating integrity, how integrity is impacted because of some action. This acts as an important factor in the balancing of competing rights, even in cases of linking to sex scenes or to linking to different ideologies than the author's own, objective analysis must be wide enough. This can in its part help to limit as little as possible freedom of expression.

Case 1974 II 49 established what kind of rights translator had to the translated text which was used in the play in a theatre. Sartre's text was translated by Kaukonen who claimed that her rights were violated when her translation was modified in different ways, phrases and words were changed to different ones which according to the Kaukonen were not expressing what Kaukonen firstly intended. Defendant claimed that words used by Kaukonen were old fashioned. Also, three scenes were based on the translation of the text which was done by another translator. Supreme Court concluded that translators literary, artistic value and personality was violated because the text was changed very drastically, it is hard for the party who changed the text, to the argument that changes were not violating translator, as the text which has been translated is translators view of best possible text. Three scenes of the translated text were replaced with someone else's translation instead of the one Kaukonen had translated, also remaining scenes in which Kaukonen's translation was used, words and phrases were changed to different ones without asking from the translator. Supreme Court concluded that this was contrary to the moral rights of the author.<sup>150</sup> When it is a case of modifications, in many times, when some work is physically altered, claim regarding the right of integrity can succeed more likely. When modification have been concluded to happen then the author still has to prove that modification caused harm to him or her.

In the Appellate Court case concerning minor changes to the logo were not to be seen as a violation as were not editorial changes to the article in the journal. In the logo case, it was

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<sup>150</sup> Supreme Court of Finland, *op.cit.*, KKO 1974:49.

essential that logo was purchased by the owner of hotel-restaurant and they had moved to new premises and changed their restaurant's name to a new one, the old logo was modified and then used in new business. The author claimed that new changes were violating the right of integrity, changes consisted of changing the name in the logo and changing colors of the logo. Appellate Court stated that changes were not substantial by their nature and no violation had happened, the author could not argue why changing of few elements in the logo would violate moral rights of the author.<sup>151</sup> From this case, it can be concluded that threshold for finding the right of integrity violation is rather high. However, if some author is known for taking black and white style photos or using a specific style in the logos for which he or she is famous, then perhaps right of integrity claim could succeed.<sup>152</sup>

Another case from Appellate Court which has set course to the assessment of modifications to the work is HO 1989: 902 in which author had send medical article to the medicine journal to be published, and then journal had done editorial changes to the text, changing words to different ones which did not to author's mind manifest what author tried to express, author claimed that because of the changed words, author would become under laughingstock in the medicine circles. Appellate Court decided that the moral rights of the author were not violated, changes were not such which would cause harm to the integrity of the author.<sup>153</sup> It seems that when the author claims that the text does not manifest what it should, then the author should specifically state in what way the expression of the texts through used words have changed and how it violates the integrity of the author. In this case evaluation of the claim that author is left under laughing if words used are changed to other similar words, it must be then assessed whether these changes really are very minimal and are not changing the expression. In the journal case, it was crucial to establish were the changed words such which could some way violate substantially author. It has been seen in the legal literature that it is accepted to do editorial changes, but these can not be substantial and change the meaning of the text.<sup>154</sup> When change is something which can be proved to be wrong for example some word is changed to some word which does not entirely mean the same, then the author has a better possibility to succeed with the claim, such situation is also then when text is modified to include different style of words, more modern words when the original translation was not modern style.

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<sup>151</sup> Appellate Court of Kuopio, *op.cit.*, see HO:1990:320.

<sup>152</sup> Appellate Court of France, first civil chamber, 28.05.1991, no. 861.

<sup>153</sup> Appellate Court of Helsinki, *op.cit.*, see HO:1989:902.

<sup>154</sup> Tekijänoikeusneuvosto (Copyright Council), 03.01.1990, opinion 1990:03. Accessible in Finnish at: <https://minedu.fi/documents/1410845/3973841/Lausunto+1990-03+Teoksen+muuttaminen%2C+moraaliset+oikeudet> (19.03.2019).



It can be deduced from the legislation, case law and legal literature that Finland interprets right of integrity according to the Berne Convention, in Finland authors receive moral protection but threshold for triggering the integrity is in all situations on high level and in some situations it seems to be even higher, for example in cases when author claims that some external factor have modified work of author by not physically altering it but merely modifying and influencing from distance to the work. Copyright legislation in Finland in regards moral rights leave from the point that work must have been modified, used or predisposed to action which is prejudicial to the authors literary or artistic value and personality.<sup>155</sup> External factors can bring out situations when the author claims that his or her right of integrity has been violated but other person or group claims that they are exercising their right to freedom of expression and no violation to the integrity of author have happened. It is important to protect the author, but it is also important to protect freedom of expression in society. From the point of view of Finland, many cases have included risk when freedom of expression could have been unduly limited. As the number of moral rights cases grow, grows also a number of cases involving conflict between the two competing rights. In a more digitalized word, it is more and more eminent that moral right claims can rise. Due to the internet it is easier to use works nowadays and in different connections which could harm the author. When it is easier to use works in different places, a number of violation cases can grow.

## **2.4 Findings and Further Recommendations**

This study has found that Finland has so far objectively assessed different cases involving moral rights. Courts and Copyright Council have taken in their reasoning starting point that if work is altered or made available to the public, an author must be able to show it is this somehow prejudicial to his or her literary or artistic reputation or individuality. Not every subjective claim in Finland has been accepted if an author has just merely stated that his or her honour or reputation is violated, authors have been required to show compelling reasons why some modification have violated them and in what way. Using the right of integrity argument in Finland have required heavy arguments as to why moral rights have been violated. Finnish case law practice seems to follow also copyright committee report from the drafting times of Copyright Act which noted that right of integrity could be used only when work has been disposed to egregious alteration or to some action which could violate the integrity of the author. In Finland, assessment of cases has been very objective, and they have

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<sup>155</sup> Tekijänoikeuslaki (Copyright Act of Finland), *op. cit.*, Art. 3.

given only small weight to the subjective view of the author, even in the situation of moral rights where a claim of violation is a subjective view, an objective analysis must be conducted thoroughly taking into account extensively different factors.

The study has established that the best way to assess conflict situations in a way which do not limit unduly freedom of expression, is to keep the same line, meaning that cases are assessed carefully from different angles. By conducting an objective analysis which does not lean too much to the subjective view of the author seems to be far most the most important factor preventing freedom of expression of unnecessary limitation.<sup>156</sup> So far Finland has managed in this, even though lack of resources is a potential threat to cases involving freedom of expression element, as reasoning may lack in the depth analysis due to lack of time of judges. It should be allocated enough resources to the justice system so that it is possible to orientate to the cases sufficiently, this can help to reduce inadequate reasoning which could lead to situations when the balancing of rights has not been clearly reasoned. In the balancing of competing rights, reasoning should be conducted as well as possible and this would then create some legal certainty to future cases. As relying too much upon the subjective view of the author is problematic therefore author should always provide clear enough arguments as to why some action is violating his or her literary or artistic reputation or individuality.

Finland has kept freedom of expression in high regard and society is free and democratic.<sup>157</sup> Different views and opinions need to be allowed in a democratic society and they must be tolerated. In this sense, fear of limiting too much freedom of expression is not as high what would be in country where opposing opinions are not tolerated so well, and courts could end up giving unduly weight to the subjective view of author, claiming for example that author of religious statue was needed to protect, and this right was stronger than freedom of expression. Those countries could lack the willingness to conduct a real objective analysis, instead, they could pick an easy route and adhere subjective view of the author.

Case law around the right of integrity in Finland is not extensive and more cases are needed, especially cases involving direct conflict explicitly between the right of integrity and freedom of expression. Cases might even go more often to the Copyright Council than to courts. Copyright Council has proved to be very popular instance offering non-binding decisions for free of charge. The decision of the Copyright Council can be seen as some kind of preliminary rulings which give hints on what kind of outcome could be expected at court. The decisions

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<sup>156</sup> S. Ricketson, J.C. Ginsburg, *op.cit.*, p. 607.

<sup>157</sup> Freedom House. – Freedom in the World 2018. Accessible at: <https://freedomhouse.org/report/freedom-world/2018/finland> (28.4.2019).

of the Copyright Council are many times even referred to in the judgments.<sup>158</sup> Information about Copyright Council should be distributed more to the citizens, this could bring up more cases regarding moral rights. Ministry of Education and Culture could promote information of the Copyright Council but also different non-governmental organizations dealing with copyright issues.

Perhaps people do not know so much of their rights regarding moral rights, and in this area, they need education, not only authors but users also such as buyers of artwork. Increased communication between authors and buyers can help to reduce conflicts. One aspect to the conflict situations in regard to the commissioned works could be that giving up of moral rights could be discussed in certain situations when the purpose is limited, as Finnish law states that moral rights can be waived for limited use of character and extent.<sup>159</sup> This would help to reduce conflicts arising from moral rights in the commercial use of works in certain situations. However, it is very crucial that author is well aware of his or her rights when giving up moral rights, it is advisable to use the help of legal experts in order to assess that the waiving of moral rights is according to the law in its extent and also that the contract is fair. It is not possible to agree similarly with the public, they can, for example, start to dance around some statue or oppose in front of some statue. This falls very largely to the sphere of freedom of expression. These are external factor situations which seem to be most vulnerable because in these lies the greatest risk for limiting freedom of expression too much. This study has found that Finland adheres international commitments in sphere of copyrights, legislation in Finland is in conformity with Berne Convention 6bis and also case law practice is in conformity with international law. Conflict situations around moral rights are not new Finland, but there is a limited number of cases around the topic and especially cases involving the right of integrity and freedom of expression.

This study has found from the legal literature and based on the case law, that Finland applies right of integrity rather strictly and does not give unduly value to the subjective perception of author, it has so far examined cases carefully and objectively, as should be, in order to avoid situations when right of integrity is protected too much at the expense of freedom of expression. Courts and Copyright Council have demanded explanations from the author as to why they see that their right of integrity is being violated, it has not been enough to merely state that they feel violated, views must be objectively analyzed to be such which have some reason and base. If Finnish courts and Copyright Council would have given more weight to

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<sup>158</sup> J., Kortelainen et al, *op.cit.*, pp. 32-37.

<sup>159</sup> Tekijänoikeuslaki (Copyright Act of Finland), *op. cit.*, Art. 3.

the subjective view, then this could seriously harm freedom of expression because the right of integrity could in some important cases be limited too much, such could have happened in the case of the painting if dance performance in the same space as the paintings were would have been seen to violate the right of integrity. As cases of relief, Mannerheim statue, gallery case, and clothed statues cases show most problematic situations where lie risk for limiting too much freedom of expression are situations where a claim for violation arises from the external factors. In order to arrive at a reasonable and justified situation, a claim must be analyzed very carefully and weighing also a general interest of people in regard to freedom of expression. If a group of people protests in the front of some statue because the manifest which statue is trying to express is against that group's beliefs, this kind of action should be tolerated in the democratic society without moral rights prohibiting it. Then again, if the author has put work on display at the gallery, then the author may have a possibility to claim the right of integrity if protesting performance is done around authors paintings. In such a situation, the author has entrusted that his or her works can be at display peacefully in the museum without any larger disturbance. Protection of the author should never be applied in a too broad manner, in a way which would unduly limit freedom of expression. Even if imposing to opposing views has been seen one of the justifications for protecting to the author<sup>160</sup>, this can be very tricky in the sense of limiting too much freedom of expression.

This study found that courts and Copyright Council must be in alert when different cases regarding competing rights arise and they must pay attention to very careful reasoning and establish what is the role of the right of integrity regarding freedom of expression. More cases around the topic are needed. Information of moral rights must be distributed to a larger group, not just to authors. This can help to reduce conflicts situations. It is important to try to avoid conflict situations and one good solution is in commercial use to agree beforehand more of the factors relating to the commissioned work, for example, in what area work will be located now and in future, and what changes area might face and how it should be used. This could be seen as some sort of user manual of work, it should be done together between the author and buyer. Even though it is not possible to avoid all conflict situations, this could at least be able to reduce conflicts. This can help between contracting parties. One solution to avoid conflicts arising from moral rights can be also waiving of moral rights in limited situations, for example in the commercial use of works. Giving up moral rights must be always carefully assessed, and it is advisable to use legal help in order to assess whether or not waiving of moral rights is lawful and fair. More research is also needed from the situations where the

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<sup>160</sup> Haarmann, *op.cit.*, p. 146.

author claims that his or her right of integrity is violated because of some external factor. This study has established where perhaps most of the problems lie in regarding conflict situations, but yet, more extensive research is needed to establish some kind of detailed balancing test, this could be done establishing a model approach to the conflict.

## CONCLUSION

Right of integrity is one of the core moral rights of the author. Right of integrity is a right which promotes creativeness as authors can be certain that their works are not allowed to be subjected to derogatory actions such as derogatory alterations or vandalism. Sometimes this right is in conflict with freedom of expression and this might cause situations where freedom of expression is unduly limited. It is not good for the open democratic society that freedom of expression is unduly limited, this can cause serious problems especially in the sphere civil- and political rights. It must be possible to criticize the main political system or some ideology in a democratic society. If the right of integrity is claimed to be violated in a situation when some group for example is merely demonstrating their mind around sculpture, then we have at hands conflict between the right of integrity and freedom of expression. These kinds of situations are very harmful, if analysis of the situations is not objective enough, especially in terms to consider what bigger meaning criticism for example has in the democratic society. It is essential always to examine to which depth right of integrity can be protected in order to avoid unduly limiting freedom of expression.

Reasonable protection of moral rights act as an incentive to use creative talent, and this, in turn, can create an economic boost. If authors feel that the creative talent they put into making process of work can eventually lead to situations where their works are being used in such way which is derogative or harmful to the author, then the motivation of author for further creating might be seriously reduced. Also, if authors right of integrity is violated then this can damage the reputation of the author and cause indirectly damages. Such situations may happen for example when works of the author have been some way used in advertisements which are linking also the author of the work to some ideology which he or she opposes and leaving others to think that author supports this ideology. This can lead to a situation when the value of works reduces, and the author receives no new commissions. Right of integrity must be reasonably protected and enforcement of rights must be in order too.

The study found that both the right of integrity and freedom of expression are well protected in Finland. Right of integrity is protected in the Copyright Act of Finland which prohibits any modification, alteration or action subjected towards the work which is prejudicial to the literary or artistic reputation of the author or to the individuality of the author. Copyright protection regarding the right of integrity is in line with Berne Convention. Moral rights protection originates also from other international declarations, treaties, and conventions. Finland has committed to many international legal instruments which regulate moral rights

protection. Finland is also an active participant in the international arena where copyright-related matters are discussed, Finland has understood that in order to boost creative innovations, it must give reasonable protection to the moral rights of authors too. The study found that in the area of freedom of expression, it is protected also well in Finland and Finland has been very high in different ranking regarding freedom of expression. Finland is a state where people have the possibility to communicate different opinions and ideas too, people must tolerate different views. In the level of legislation, freedom of expression is enshrined in the Constitution of Finland and Finland has also committed to different international legal instruments which regulate the freedom of expression. As meaning of freedom of expression is to be able to communicate different type of information and also opposing ideas, therefore, protection of right of integrity unduly might actually be limiting freedom of expression too much in a way which is not easily justified in society where opposing ideas need to be tolerated.

The study asked how Finland interprets and applies the right of integrity and what are situations when the conflict between the two competing rights arises. Based on a thorough analysis of national legislation and international legislation to which Finland is committed, case law and legal literature it is possible to deduct that Finland adheres the moral rights of authors. When comparing the position of Finland internationally, it is in the middle in the level protection. Protection is not as high as in France, but very strong still. Finland fulfills minimum standards of Berne Convention concerning the moral rights of the author. There are some cases around moral rights in Finland. Many of the major Supreme Court cases and Appellate Court and Copyright Council cases were analyzed in this study in order to establish how Finland applies in practice the right of integrity. Despite the amount of case law, it was possible to deduct from the legislation, case law and legal literature how Finland applies right of integrity and what are those situations where two competing rights collide. Finland interprets right of integrity very objectively, it does not give much weight to the subjective view of the author. So far, cases have been dealt objectively and reasoning has been quite detailed. It has been seen that connecting the author directly to pornographic material is often a violation of the right of integrity. Connecting to the pornographic material should not automatically mean that the right of integrity has been violated, it must be always carefully assessed that what the situation is overall.

Cases have shown that many time authors lacked reasoning why the right of integrity was violated according to them. Even in cases where author have given quite extensive arguments such as in Mannerheim statue case, the court has held that arguments were not enough when

weighing those arguments in the objective analysis. The threshold for triggering the right of integrity protection has been very high. Some editorial changes are permitted but changing content of the texts is not. Application of the right of integrity in Finland is rather strict and done from the objective basis, and this has enabled Finland to adhere freedom of expression.

Currently, Finland has not unduly protected right of integrity, reasons for this can be seen to be objective analysis and good reasoning in cases and high ranking of freedom of expression in Finland. In countries where freedom of expression is not adhered so well, it would be easy to limit freedom of expression by giving too much weight to the subjective view of the author. Finland has not given too broad application to the right of integrity, yet, but in any of the court cases or Copyright Council cases freedom of expression was not analyzed explicitly by the court or council, there is no balancing test currently available to the problem. There is still a possibility that situations involving conflict elements arise, as a number of cases arises. This is very probable especially due to the digital era when copyright-related content moves in fast speed and sharing of content is easier than ever.

The study has established that real danger lies in cases where author claims are based on some external factor which according to the author is influencing to the work. Most common examples of cases involving external element are for example works placed in a public place and they then face some action such as demonstrations or other works placed near which have a different expression. If the right of integrity would be given a too broad interpretation in such situation, then it would not be possible to do some counter performance around some statue or to place work of a different ideology near some other work. If someone or some people physically modify or alter the work then it could be perhaps easier to the argument that the integrity of the author has been violated since the expression of the work has been changed. However, when work has not been physically modified or altered, then the author must have compelling reasons as why some action is violating literary or artistic reputation or individuality. If a claim is accepted without deeper analysis and looking into the protection of freedom of expression and general interest of democratic society, then this is a situation where the right of integrity has been given too broad application. The Study confirmed that too broad application of the right of integrity can limit unduly freedom of expression. The hypothesis was thus affirmed.

The study established in what situation conflict between the two rights can arise, it also established solutions on how to prevent conflicts. It is necessary to prevent conflicts but also once conflicts have emerged, they must be analyzed accordingly. The study, therefore, established different measures of how conflict situations can be prevented and what factors



need to be taken into account in a conflict situation, in order to avoid limiting unduly freedom of expression. Measures divide into preventing measures and measures which can be used after the conflict has emerged. The study established that increasing awareness of moral rights can help to reduce conflicts. Information should go to a larger group, not just to authors. It is important that authors know when and in what kind of situations they might receive protection. For others, it is very beneficial to know what moral rights are and what actions can constitute as the violation of a moral right. Information of moral rights should be distributed by the Ministry of Education and Culture, different copyright organizations and schools. More information should be also given from Copyright Council which is an established instance to ask non-binding opinions to different cases without having any financial burden from the court costs. Opinions of the Copyright Council can act as a guideline whether or not to go to court with the case.

The study found that other measures to prevent conflicts are to get authors and buyers of works to agree more frequently of terms and conditions of the use of work beforehand. If different aspects concerning the use of work are agreed beforehand, then this can help to reduce conflict situations. This does not solve all possible conflicts arising from different moral rights claims, but some sort of framework for using work might reduce conflicts. If for example, some city is planning to order a monument, then the city should clearly enough state during the buying process what plans there are for the placement area of the monument in the future and how city wishes to use work of art.

Moral rights claims can also be in some certain and limited situations waived, this might be a good solution in some situations. Waiving of moral rights according to Finnish law is possible in limited situations but this should always be done in understanding that the scope of moral rights waiver is not too broad. Waiving of moral rights is not an easy solution to prevent conflicts, but in some certain situations, it could work and be in the interests of the author.

The study established also measures which should be taken into account in conflict situations, once the conflict is at hand. It is very vital that resources of the justice system are adequate, as lack of resources can lead to a situation when judges do not have enough time for difficult cases and then there is a threat that reasoning in conflict cases is not so objective and thorough. The study established that good objective and thorough analysis and reasoning are very vital steps in order to guarantee a situation where freedom of expression is not unduly limited. If judges have too little time for handling cases, then this can reduce the quality of judgments, as analysis might not have been so thorough and the relation between the right of integrity and freedom of expression not assessed deeply enough. It is very vital that judges and experts in

the Copyright Council also continue objective analysis and do not give too much value to the subjective views of the author. If subjective views of the author are given too much weight, then this is one of the most probable situations where limiting freedom of expression unduly can happen. It should always be balanced what happens in the bigger picture to the development of democratic society if the right of integrity prevails freedom of expression. Public interest should always be taken into account when assessing and balancing conflict situations. For this reason, even if imposing work to actions of opposing ideologies is seen one of the legitimate justifications for claiming that right of integrity is violated, this claim should have only limited use because it is very important that civil and political rights can be exercised. Freedom of expression should in these situations have prevalence. More research around conflict is needed and also more cases around the conflict are needed. Creation of a model approach to be used in conflict situations might be one good measure for further research. Besides research regarding the model approach to conflict, more research is needed overall from the topic.

## **ABBREVIATIONS**

Berne Convention - The Berne Convention for the Protection of Literary and Artistic Works

ECHR - European Convention on Human Rights

ECtHR - European Court of Human Rights

ICCPR - International Covenant on Civil and Political Rights

TRIPS - Agreement on Trade-Related Aspects of Intellectual Property Rights

UDHR - Universal Declaration of Human Rights

WCT - WIPO Copyright Treaty

WIPO - World Intellectual Property Organization

WPPT - WIPO Performances and Phonograms Treaty

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## **PHOTOGRAPHS**

72. Fearless girl statue across Raging Bull statue. Anthony Quintano. Photo under Creative Commons licence.

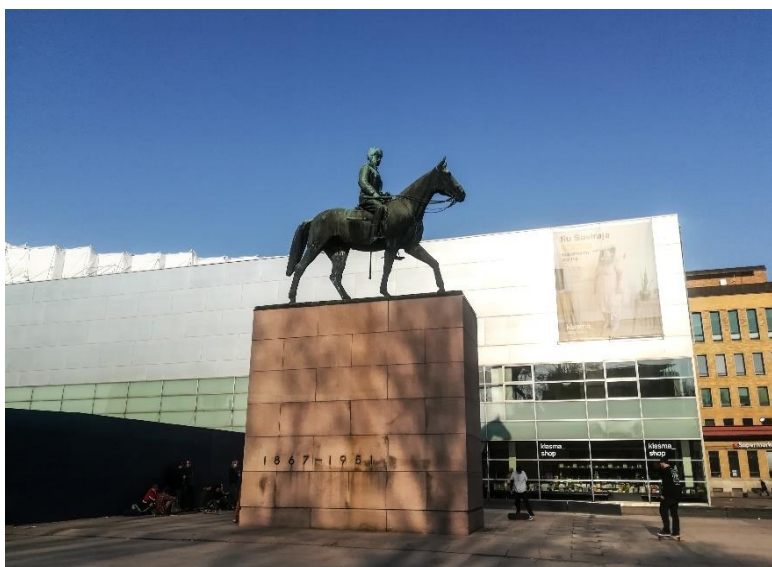
73. Mannerheim statue next to Modern Art Museum Kiasma in Helsinki. Jade Myllykangas. 2019.

## APPENDICES

Appendix 1. Fearless Girl statue standing across Raging Bull statue. Anthony Quintano.  
Photo under Creative Commons licence.



Appendix 2. Mannerheim statue located next to Modern Art Museum Kiasma in Helsinki.  
Jade Myllykangas. 2019.



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